

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

DECEMBER 19TH, 1919.

*STOCK v. MEYERS AND COOK.

Sale of Goods—Conditional Sale—Agreement—Seizure of Goods under Execution—Pretended Seizure by Assignee of Vendor when Goods in Possession of Bailiff under Execution—Conditional Sales Act, R.S.O. 1914 ch. 136, sec. 8—Retention of Goods for 20 Days—Conversion—Title—Right to Retake Possession—Pretended Taking Possession and Sale—Concealment—Acceptance of Payment after Default—Waiver—Request for Payment.

Appeal by the defendants from the judgment of LENNOX, J., 16 O.W.N. 263.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

J. M. Ferguson, for the appellants.

R. S. Robertson, for the plaintiff, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said that the action was brought to recover damages for the conversion of 4 show-cases, and the defence was that the defendant Meyers was the owner of them, having acquired title by purchase from Minnie Whyte, who, it was alleged, was the owner and in possession of them. The Chief Justice agreed with the conclusion of the trial Judge that there was no real sale to Minnie Whyte; that the pretended sale was a mere sham. The defendant Cook was the real actor—if Minnie Whyte acted at all, it was to play the part of a mere dummy.

That conclusion was not of itself fatal to the appellants' case. The result of the transaction was, that Meyers acquired whatever rights Cook & Mitchell had; and it was necessary to inquire what those rights were, and whether, in the exercise of them, Cook could convey title to the goods sufficient to defeat the respondent's title from McHale.

Apart from the effect of sec. 8 of the Conditional Sales Act, R.S.O. 1914 ch. 136, and the acceptance by Roche of payments on account of the promissory note of McHale after default had been made in payment of the note at its due date, the right of a vendor in the position of Roche is well-settled. The vendor may, if default

* This case and all others so marked to be reported in the Ontario Law Reports.