

may or is to become the owner upon performance of any condition, and it is specifically provided that the restriction is not to apply where the property is claimed by the wife of the tenant, etc.

It is quite true that the provisional sale of this sewing-machine was made to the wife of the tenant, and not to him, and that when it was seized for the distress, it was not "claimed" by the wife, but it was there in the house in the "possession of the tenant under a contract for purchase" of which the wife was to become the owner upon payment of the purchase money, and it was, in my judgment, as much the subject of a distress for rent under the circumstances, as it was before the passing of the statute 50 Vict. c. 23, or the R. S. O., 1887, c. 143.

It mattered not whether the sale was to the tenant or to his wife, because the exemption only applies to the cases specially restricted by the terms of the statute; anything not so exempted would be subject to the state of the law as it stood before the statute as to exemptions for such seizures, was passed. It is specifically provided by the statute that the restriction is not to apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant or by any other relative of his, in case such other relative lives on the premises as a member of the tenant's family; so that neither the plaintiff who made the contract for the purchase of the machine with the tenant's wife, by which she was to become the owner thereof, nor the wife herself could claim any exemption under the 28th section, because the plaintiff could only claim the machine through any exemption to which the tenant was entitled, she had no such right whatever.

The wife of the tenant had no property in the machine, so that she could not claim it as hers; but whether she could or not, the only question is whether or not it was, in a proper sense, in the possession of the tenant, her husband.

I regard the word "possession" in the 28th section, as intended in its popular and not strict legal sense, because if there were a possession in the wife the exemption could not be claimed by her, and much less for her, even if she were the absolute owner of the machine. An action could have been main-

tained by the tenant against any wrong-doer who might take away the machine out of the house whilst he was in the occupation and possession of the premises, without shewing that he had any property in the machine, (3 Salk. 9) because there is a presumption of possession from the fact of the machine being upon the premises. I also consider that the object of the exceptions to the wide provisions set forth in the introductory part of the 28th section, was to protect landlords against being induced to admit persons as tenants of their houses and lands, who are only the apparent owners of goods and chattels in their possession, and which really belong to someone else, and to make persons who sell their wares to impecunious persons, under contracts for purchase, more cautious as to whom they trust the possession of them. I think, therefore, that this plaintiff cannot avail himself of any advantage that he might expect to derive from this point of supposed weakness in the defendant's right to distrain.

I find that reasonable opportunity was given by the bailiff for the tenant to determine what he would do, and that he would do neither.

I therefore find and give judgment for the defendant, because the tenant neither paid nor tendered the rent nor gave up possession of the premises, and the sewing-machine was therefore liable to seizure and sale to pay the rent in arrear, just the same as it would have been before the passing of the statute to which I have referred.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

[Dec. 14, 1888.]

PURDOM v. BAECHLER.

Partnership—Dissolution—Debt of retiring partner—Mortgage of partnership property for—Liability of remaining partner—Accommodation note—Collateral security—Voluntary payment of.

N. borrowed an accommodation note from P. and gave it as security for part of the purchase of a mill. N. and B. afterwards went into partnership and gave a mortgage on partnership property for the debt partly