

Here the land could not be considered as a mere curtilage to the cottage, and we ought to draw the inference in point of fact, that this was such a piece of land as would give rise to a substantial claim for emblements; and is, therefore, "a farm or lands" within the act.

With respect to the second point, that the words "recover and receive of the tenant" do not include the right to distrain, it is true that in strict legal language recover means recover by action. The Court might at one time have so construed it in a case like the present; but it is now often used in the larger sense of obtaining in any legal manner, and that is the sense in which it should be interpreted here; especially as the context expressly provides that the landlord and tenant shall, as against each other, be entitled to all the benefit and advantages to which the preceding landlord and such tenant would have respectively been entitled in case the tenancy had not expired till the expiration of the current year. The defendants were therefore entitled to distrain, and our judgment must be in their favour.

1868

HAINES
v.
WELCH.

KEATING and BRETT, JJ., concurred.

Judgment for the defendants.

Attorneys for plaintiff: *Wright, Bonner, & Wright.*

Attorneys for defendants: *Wing & Ducane.*

[IN THE EXCHEQUER CHAMBER.]

Dec. 1.

FUENTES AND ANOTHER v. MONTIS AND ANOTHER.

Factors Acts, 6 Geo. 4, c. 94, and 5 & 6 Vict. c. 39—Authority of Factor to Pledge Goods—Revocation.

An agent "intrusted with and in possession of goods, or of the documents of title to goods," within the Factors Acts, is a person who is intrusted as agent for sale; and consequently one whose authority to sell has been revoked cannot make a valid pledge of goods which had been intrusted to him for sale, but which he has wrongfully retained after his authority has been revoked, and the goods demanded from him by his principal.

APPEAL, by the defendants, from a decision of the Court of Common Pleas, upon an interpleader issue directed to try the right to certain wines upon which the plaintiffs claimed a lien for

1868

FUENTES

v.

MONTIS.

an advance of money to the defendants' agent under the Factors Act, 5 & 6 Vict. c. 39. (1)

C. Pollock, Q.C. (Archibald with him), for the defendants. The question, which in this case comes for the first time before any court is, whether a factor, who has been intrusted with goods for sale as such, and who has pledged the goods so intrusted to him for a bonâ fide advance made after a secret revocation of his authority by his principal, can give a good title to the person who so advances the money. The case will depend upon the true construction of the last Factors Act, 5 & 6 Vict. c. 39; but some light will be derived from a reference to some dicta of learned judges and the previous course of legislation upon the subject. The decisions as to the revocation of the authority of an agent generally have but little application. Before the passing of the earliest of the Factors Acts, 4 Geo. 4, c. 83, one who had held out another as his agent, could not by a secret revocation of his authority invalidate his acts; but an agent to sell had not authority to pledge the goods of his principal. Most of the jurists as well of our country as of Scotland, America, and the principal mercantile states of continental Europe, have from time to time advocated an extension of the agent's authority: see *Williams v. Barton* (2); 1 Bell's Commentaries, 181—184; Story on Agency, s. 113, n.; 2 Kent's Commentaries, 10th edit. 869, n. And the object of the Factors Acts was to make that alteration in the law which those learned writers suggest. This object was imperfectly carried out by 4 Geo. 4, c. 83, and 6 Geo. 4, c. 94: see *Phillips v. Huth* (3); *Hatfield v. Phillips* (4); *Bonzi v. Stewart*. (5) Then came the last act, 5 & 6 Vict. c. 39. It recites the 6 Geo. 4, c. 94, and further recites that "whereas advances on the security of goods and merchandize have become an usual and ordinary course of business, and it is expedient and necessary that reasonable and safe facilities should be afforded thereto, and that the same protection and validity should be extended to bonâ fide advances upon goods and merchandize as by the recited act is given to sales, and that owners intrusting

(1) Law Rep. 3 C. P. 268.

(2) 3 Bing. 139, 145.

(3) 6 M. & W. 572.

(4) 9 M. & W. 647; 12 Cl. & F. 343.

(5) 4 M. & G. 295.

agents with the possession of goods and merchandize, or of documents of title thereto, should in all cases where such owners by the said recited act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances bonâ fide made on the security thereof." It then proceeds to enact, in s. 1, that, "from and after the passing of this act, any agent who shall thereafter be intrusted with the possession of goods, or of the documents of title to goods, shall be deemed and taken to be owner of such goods and documents, so far as to give validity to any contract or agreement by way of pledge, lien, or security bonâ fide made by any person with such agent so intrusted as aforesaid."

[COCKBURN, C.J. That merely extends the words of the former act to a new class of cases.]

Sect. 4 defines the meaning of the words "document of title." It enacts that "any bill of lading, India warrant, dock-warrant, warehouse-keeper's certificate, warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or delivery, the possessor of such document to transfer or receive goods thereby represented, shall be deemed and taken to be a document of title within the meaning of this act; and any agent intrusted as aforesaid, and possessed of any such document of title, whether derived immediately from the owner of such goods or obtained by reason of such agents having been intrusted with the possession of the goods, or of any other document of title thereto, shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid, and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates;" "and an agent in possession as aforesaid of such goods or documents shall be taken, for the purposes of this act, to have been intrusted therewith by the owner thereof, unless the contrary can be shewn in evidence."

[COCKBURN, C.J. The legislature may have thought that, where one of two innocent persons must suffer from the act of a

1868

 FUENTES
v.
MONTIS.

1868
FUENTES
v.
MONTIS.

third, it is only just and equitable that the loss should fall upon him who has allowed that third person to have the appearance of owner of the goods. But the case is very different when the true owner has insisted upon having his goods back, and has done all he could to revoke the authority of the factor. In dealing with an act of parliament which alters the existing law, we must give it a reasonable construction, so far as the words used will admit of it. The question is whether an agent who has been intrusted with goods, or with the symbols of property in goods, for the purpose of sale, but whose authority has been revoked, can be said to be intrusted with the possession within s. 1.]

Each successive enactment has given more ample authority to the factor to deal with the property or the symbols of property intrusted to him in accordance with the usages of merchants. The construction put upon this act by the court below gives it a limitation which did not belong even to the common law. In *Trueman v. Loder* (1), where there had been a long course of dealing through an agent, a contract made by the agent in the name of the principal, though after the determination of the agent's authority, was held to bind the principal. The object of the act manifestly was, to make the original intrusting and the actual possession evidence of agency. So construing the act, the intention of the legislature is carried into effect, and no violence is done to the language they have used.

Sir G. Honyman, Q.C. (Channell with him), for the plaintiffs, was not called upon.

COCKBURN, C.J. We are all clearly of opinion that the judgment of the Court below must be affirmed. Mr. Pollock was under the necessity of admitting that but for the last Factors Act, 5 & 6 Vict. c. 39, he would have had no locus standi at all. By the law as it stood before, it is clear that a man could only transfer that which he himself possessed. The Factors Act intended to make an exception in the case of a person being an agent and being as such intrusted with the possession of goods for sale. Mr. Pollock's proposition is this, that a person who has once been intrusted with goods for sale, and whose authority has been put an

(1) 11 Ad. & E. 589.

end to, and who retains possession of the goods against the will of his principal, is nevertheless still a person "intrusted with the possession of them," within the meaning of the act. We think the statute did not contemplate such a state of things as that.

1868
FUENTES
v.
MONTIS.

BRAMWELL, CHANNELL, and PIGOTT, BB., and HAYES, J., concurred.

Judgment affirmed.

Attorney for plaintiffs: *John Elliott Fox.*

Attorney for defendants: *J. H. Head.*

[IN THE EXCHEQUER CHAMBER.]

Dec. 2.

MORGAN AND ANOTHER *v.* THE METROPOLITAN RAILWAY
COMPANY.

Railway Company—Notice to Treat—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 18—Notice under Special Act (27 & 28 Vict. c. cccxv.), s. 13—Mandamus under s. 68 of the Common Law Procedure Act, 1854.

The Metropolitan Railway (Tower Hill Extension) Act, 27 & 28 Vict. c. cccxv., by s. 2 incorporates, amongst others, the Lands Clauses Consolidation Act, 1845, and by s. 13 provides that the company, before they enter upon or take any tenement under the powers of the act, shall give six months notice of their intention so to do to the person assessed to the relief of the poor in respect of such tenement. The 18th section of the Lands Clauses Consolidation Act, 1845, provides that, when the promoters of the undertaking shall require to purchase or take lands which they are authorized to take, they shall give notice thereof to the parties interested in such lands, and by such notice shall demand from them the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and that every such notice shall state that the promoters are willing to treat for the purchase of the lands, and as to the compensation to be made for damage sustained by reason of the execution of the works.

The Metropolitan Railway Company gave a notice to the plaintiffs of their intention to take at the expiration of six months a tenement for which the plaintiffs were rated. In consequence of this notice (which did not purport to be a notice under, or contain the particulars mentioned in, s. 18 of the Lands Clauses Consolidation Act, 1845), the plaintiffs took other premises, and their former premises remained upon their hands unoccupied. The company having failed to proceed with the purchase of the premises, the plaintiffs after the six months had elapsed commenced an action against them for damages, and claimed a mandamus:—

Held,—affirming the judgment of the Court of Common Pleas,—that the notice served by the defendants bound them to proceed with the purchase of the pre-