

hereditaments, corporeal or incorporeal, or any interest therein. NORTH J.
 How in the face of those words can I say that "land" does not 1895
 include all land, but merely includes land in possession; and HOOD BARRS
 that "any interest" in land can only mean an interest in posses- v.
 sion, and that land or an interest in land which is in remainder CATHOART.
 is entirely outside the Act? It would seem to be an entire
 departure from the language used, which there is nothing what-
 ever to justify. It is admitted that no case exists which assists
 the contention of the plaintiff.

In my opinion, the construction of the Act, which is all I have
 to turn to, is completely against him, and I must dismiss the
 action, with the usual consequences.

Solicitors for plaintiff: *Hood Barrs & Co.*

D. P.

NICHOLSON v. HARPER.

NORTH J.

[1895 J. 594.]

1895

Principal and Agent—Pledge to Person in Possession—Sale of Goods Act, 1893
 (56 & 57 Vict. c. 71), s. 25, sub-s. 1.

May 24.

A merchant sold wine stored in the cellars of a warehouseman, and
 afterwards pledged the wine to the warehouseman for advances made in
 good faith without notice of the sale:—

Held, that the pledge conferred no title to the wine.

IN January, 1894, J. and W. Nicholson & Co., Limited, the
 plaintiffs in this action, purchased from W. C. Goldsmith, of
 40, Great Tower Street, 250 dozen old port, described as "Bin 101"
 in a receipted invoice delivered to the plaintiffs on January 25,
 1894. The wine was stored in the cellars of Messrs. Gammage
 & Hollingum under an agreement the terms of which were
 stated in the following memorandum, signed on behalf of W. C.
 Goldsmith, and dated September, 1893: "I agree to take from
 you cellar room in your London Street cellars for not more than
 4500 dozen wines and spirits, at a rental of 120*l.* per annum
 for five years from the date of expiration of present existing
 agreement. Should the quantity of wine, &c., at any time

NORTH J. exceed 4500 dozen I agree to pay you an additional rent to be mutually agreed.”

1895
NICHOLSON
v.
HARPER.
—

No special part of Messrs. Gammage & Hollingum's cellars was set apart for the wine of Goldsmith. An order on Messrs. Gammage & Hollingum for delivery of the wine to the plaintiffs was sent to the plaintiffs, but no notice of the purchase was given to Messrs. Gammage & Hollingum till after the transactions next mentioned.

On May 31, 1894, W. C. Goldsmith signed a memorandum of lien in favour of Messrs. Gammage & Hollingum in the following terms:—

“In consideration of you having advanced to me this day the sum of £1500 as a loan for twelve months at 7 per cent. per annum interest, I hereby give you as collateral security a lien on all wines and spirits now lying in your cellars at 16, London Street (and also on any that may hereafter be sent in), and in addition I have given you three acceptances of £500 each and due 31st May, 1895.

“The interest, as stated above, to be paid every three months commencing 31st August, 1894.”

On November 7 W. C. Goldsmith signed a further memorandum of charge in favour of Messrs. Gammage & Hollingum as follows:—

“In consideration of your accepting, for my accommodation, the two drafts enclosed, viz.: £149 17s. due 5th February, 1895, £200 due 11th February, 1895, I give you as security for these and any similar drafts you may hereafter accept for me, all my stock of wines and spirits held by you over and above those you retain as security for your loan to me of May 31st last.”

A receiving order had been made against Goldsmith. The wine pledged to Messrs. Gammage & Hollingum was advertised for sale by auction on their behalf on April 4 and 5, 1895. The 250 dozen port sold to the plaintiffs was catalogued for sale on April 5. The writ in this action was issued on the 4th of April against Harper, the auctioneer, and Messrs. Gammage & Hollingum; and by it the plaintiffs claimed an injunction to restrain the sale and delivery of the 250 dozen port bought by them. An ex parte interim injunction had been granted. The action

was now brought on on motion to continue the injunction till hearing; and the motion was treated as the trial. The defendant Harper had been dismissed.

NORTH J.

1895

NICHOLSON

v.

HARPER.

Swinfen Eady, Q.C., and *Eve*, for the plaintiffs. The only suggestion of title on behalf of the defendants is that some authority was conferred on Goldsmith to pledge by the Sale of Goods Act, 1893, s. 25, sub-s. 1. But this case is not within that section; in the first place Goldsmith did not and could not remain in possession of the goods, or any mercantile documents of title, and never delivered or transferred either the goods or any documents of title to the pledgees, who already had the goods; and no documents of title are shewn to have existed.

Vernon Smith, Q.C., and *Rowden*, for the defendants Gammage & Hollingum. We claim to be entitled under s. 25, sub-s. 1, of the Sale of Goods Act, 1893, which enacts that, where a seller remains in possession of goods, or the documents of title to goods, and delivers or transfers the goods or documents of title to a buyer or pledgee, who takes in good faith, without notice, the seller confers a good title. Our argument is that Goldsmith was in constructive possession of the 250 dozen port, and transferred the goods, or some interest in the goods, within the meaning of the enactment.

Swinfen Eady, Q.C., in reply.

NORTH J. (after stating the facts). The question is whether Goldsmith was in a position to give a valid charge on the plaintiffs' goods in favour of the defendants. Before the Factors Act, 1889 (substantially re-enacted as to the matters now in question by s. 25, sub-s. 1, of the Sale of Goods Act, 1893), there were rules of law relating to the sale of goods into which I need not now go beyond saying, that, independently of the Act, Goldsmith could not give a title to the goods. Therefore, the claim, if any, of Messrs. Gammage & Hollingum must be established under s. 25 of the Sale of Goods Act. Sub-s. 1 enacts, "where a person having sold goods"—in this case that is Goldsmith—"continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer

NORTH J. by that person, or by a mercantile agent acting for him, of the
1895 goods or documents of title under any sale, pledge, or other
NICHOLSON disposition thereof, to any person receiving the same in good
v. faith and without notice of the previous sale, shall have the
HARPER. same effect as if the person making the delivery or transfer
— were expressly authorized by the owner of the goods to make the
same.” If Goldsmith had been authorized by the owners to
make the pledges, of course they would have been bound. The
question is, as he was not actually authorized, whether the Act
puts him in the position of being expressly authorized. The
only case in which the seller is placed by the Act in the position
of being so authorized is where he continues or is in possession
of the goods or documents of title. In such cases the Act makes
the delivery or transfer of the goods or documents of title to a
person receiving the same in good faith authorized. Therefore
there must be some delivery or transfer, whatever that may
mean, after the sale, without notice that such sale had taken
place. In the present case the defendants were themselves in
possession of the goods long before the sale, and have continued
in the same position till the present time. There has been no
alteration in that respect. I read the Act to mean that there
must be a delivery of the goods by the seller in possession, or,
where there is no delivery of the goods, the transfer of documents
of title—well-known mercantile documents, defined by the Act
by reference. That being so, in the present case there has
been no delivery to the defendants since the sale at all, and
no transfer of any documents of title; nor could there have
been, for there were no such documents. But Mr. Vernon
Smith says the Act works a constructive transfer of the goods,
or a transfer of some interest in the goods. I do not see how
a person is protected in the possession of the goods by the Act,
unless the requirements of the Act have been satisfied; and I
do not see how there has been anything like a transfer of the
goods, even assuming that the word “transfer” is applicable to
the goods. In point of fact, the defendants have been in posses-
sion of the goods ever since the sale, and there has been no
delivery or transfer to them of any kind since the sale. The
defendants have acted perfectly fairly and honestly in keeping

the goods; as there was a legal point to be decided, they were entitled to keep the goods till that point was decided. Whatever warehouse charges they have will not be prejudiced. The order will be: The plaintiffs undertaking to pay to the defendants their warehouse charges, if any, order the defendants upon such payment to deliver up the goods to the plaintiffs.

NORTH J.

1895

NICHOLSON

v.

HARPER.

Solicitors for plaintiffs: *Nash, Field & Co.*

Solicitors for the defendants Gammage & Hollingum: *Park Nelson & Co.*

D. P.

HARLE v. JARMAN.

[1894 H. 3722.]

Married Woman—Reversion—Election.

NORTH J.

1895

May 7, 9, 29.

A separation deed executed in 1875, not acknowledged by the wife, provided for payment by the husband of an annuity to the wife; who covenanted to release, when discovered a reversionary life interest in real and personal estate:—

Held, that on the death of the husband the wife was not bound to release her life interest by having received the annuity.

The doctrine of election by a married woman discussed.

ON the marriage of Johnson Harle and Louisa Patrick in May, 1873, real and personal property belonging to the husband was settled on trust, as to the income, for the husband during the joint lives of husband and wife, with remainder for the survivor for life; and as to the capital, in the events which happened, for the benefit of the children of the husband by a former marriage; and certain furniture belonging to the husband was settled on the wife for life for her separate use.

Johnson Harle, by his marriage with Miss Patrick, became entitled to a reversionary interest in some property under a deed of family arrangement made in 1870, to which Miss Patrick was a party.

There was no issue of the marriage. Early in 1875 Mrs. Harle filed a petition in the High Court for judicial separation. On the hearing of the petition an arrangement between the parties