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IN RE
TITHE ACT,
1891.
HUGHES
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RIMMER.

suppose that on an application for a certificate the county court judge must determine the tenant's liability to pay tithe.

The other point, that the sub-section does not apply until the tithe-owner has brought the landowner into Court, can hardly be seriously argued.

LAWRANCE, J. I concur.

Appeal dismissed. (1)

Solicitors for appellant: *Hamlin, Grammer, & Hamlin, for Brighthouse, Brighthouse, & Jones, Ormskirk.*

Solicitors for respondent: *Wynne & Co., for Forshaw & Co., Liverpool.*

W. J. B.

C. A.

[IN THE COURT OF APPEAL.]

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Aug. 2.

LEE v. BUTLER.

Sale of Goods—Factors Acts—Possession of Goods under Agreement to Purchase—Furniture—Hire and Purchase Agreement—Factors Act, 1889 (52 & 53 Vict. c. 45), ss. 2, 9—Dispositions by Sellers and Buyers of Goods.

By the Factors Act, 1889, s. 2, any sale, pledge, or other disposition of goods made by a mercantile agent in possession of the goods with the consent of the owner shall, if certain specified conditions are fulfilled, be as valid as if the agent were expressly authorized by the owner to make the same; and, by s. 9, where a person, having agreed to buy goods, obtains with the consent of the seller possession of the goods, the delivery by that person of the goods under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller, shall have the same effect as if the person making the delivery were a mercantile agent in possession of the goods with the consent of the owner.

L., being in possession of furniture under a hire and purchase agreement made with the plaintiff, sold and delivered the furniture, before the last payment had accrued due or been paid, to the defendant, who received it in good faith and without notice that the plaintiff had any right in respect of it:—

Held, that the sale and delivery to the defendant was within the provisions of s. 9, and therefore valid.

APPEAL from the judgment of Wright, J., at the trial, without a jury, in Middlesex.

The plaintiff's claim in the action was for the return of certain

(1) Leave to appeal was granted, but no appeal was brought from the decision.

goods alleged to be detained by the defendant, or the value of such goods, and damages for their detention.

The following facts were proved in evidence or admitted at the trial: On May 5, 1892, a hire and purchase agreement in writing was entered into between W. E. Hardy, furniture dealer, and Helen Caroline Lloyd, of Thistle Grove Lane, South Kensington, the terms of which (so far as is material) were as follows:—

“First: The said W. E. Hardy agrees to let on hire unto the said H. C. Lloyd, hereinafter called the hirer, who agrees to take on hire upon the terms hereinafter expressed, the furniture, goods, and chattels mentioned and specified in the schedule hereunder written.

“Second: The said hirer for herself agrees, subject as hereinafter provided, to pay to the said W. E. Hardy, as and by way of rent for the hire and use of the said furniture, goods, and chattels, the respective sums and at the periods following: that is to say, the sum of 1*l.* on May 6, and the further sum of 96*l.* 4*s.* on August 1, 1892.

“Third: The said hirer further agrees that she will not, during the continuance of this agreement, remove the said furniture, goods, and chattels from 5, Thistle Grove Lane aforesaid to any other premises without the consent in writing of the said W. E. Hardy . . .”

The fifth clause provided that if at any time thereafter during the continuance of the agreement any payment of rent thereby reserved should be in arrear and unpaid for the space of one week after the specified days or times whereon the same should become due, or if the hirer should remove the said furniture, goods, and chattels from 5, Thistle Grove Lane, or from any place to which they should have been removed with the consent of W. E. Hardy, then it should be lawful for W. E. Hardy or his agent forthwith to take possession of and recover the said furniture, goods, and chattels without notice to the hirer of his intention so to do, and for that purpose if necessary to enter by force into any premises where the said furniture, goods, and chattels might then be, and search for and remove the same. And in such case the hirer agreed that all moneys paid by her before such default should be applied by W. E. Hardy as

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The fifth clause concluded :—

“The said W. E. Hardy for himself hereby agrees that when and as soon as the said hirer shall have well and truly made all payments of rents hereinbefore reserved and performed all the stipulations and agreements hereinbefore on her part contained, the rent or payments hereinbefore mentioned and reserved for the said furniture, goods, and chattels, shall thereupon cease, and the aforesaid furniture, goods, and chattels shall thenceforth be and become the sole and absolute property of the said hirer. But it is expressly declared and agreed that no property or interest in the said furniture, goods, and chattels other than as tenant as aforesaid shall vest in the said hirer until the whole of the said payments of rent hereby reserved, amounting together to the sum of 97*l.* 4*s.*, shall have been actually made by her as hereinbefore provided.”

A schedule of the articles of furniture followed.

W. E. Hardy duly assigned the agreement and all his interest thereunder to the plaintiff, and subsequently Mrs. Lloyd, before all the instalments were paid under the agreement, sold and delivered the goods to the defendant, in whose possession they were when the action was brought.

Wright, J., gave judgment for the defendant, holding that the case came within s. 9 of the Factors Act, 1889 (52 & 53 Vict. c. 45) (1), which section afforded a good defence to the action.

The plaintiff appealed.

(1) Sect. 2, sub-s. 1: “Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same: Provided that the person taking under

the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.”

Sect. 9: “Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer, by that person or by a mercantile agent acting for him, of

Lynch, for the appellant. Mrs. Lloyd was not "a person having bought or agreed to buy goods" within the meaning of s. 9 of the Factors Act, 1889. A hire and purchase agreement such as this is not within the section; the agreement to sell is conditional; the purchase does not take place unless and until the last instalment is paid. Assuming there is an agreement to purchase, still, it is contended, the Factors Acts were not intended to include this sort of case. Under the earlier Factors Acts (6 Geo. 4, c. 94, and 5 & 6 Vict. c. 39) furniture was held not to be within the words "goods, wares, and merchandize": *Wood v. Rowcliffe*. (1) A similar limitation ought to be placed upon those words in the Act of 1889.

[KAY, L.J. By s. 1, sub-s. 3, "the expression 'goods' shall include wares and merchandize." The word "goods," therefore, would seem to cover something more than wares and merchandize.]

The statute is intituled, "An Act to amend and consolidate the Factors Acts." It is submitted that the intention was to deal with such mercantile transactions as were dealt with by the previous Factors Act. There has been no decision as yet upon the Act of 1889.

C. L. Attenborough, for the respondent, was not heard.

LORD ESHER, M.R. This is a very plain case, and the construction of the statute is very clear. It deals with "Dispositions by mercantile agents" in one set of sections, and with "Dispositions by sellers and buyers of goods" in another set of sections, in which s. 9 is included. The case is clearly within that section. [His Lordship read s. 9.] Mrs. Lloyd had agreed by this hire and purchase agreement to buy the goods, and they were put into her possession with the consent of the owner. Mrs. Lloyd sold the goods to the defendant without notice that they were not hers, and he, acting in good faith and with no notice of the

the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the

original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner."

(1) 6 Hare, 183, at p. 190.

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C. A. plaintiff's right, received them. Sect. 9 was passed to meet
1893 this very kind of case. I am of opinion that the judgment of
Wright, J., was right, and this appeal should be dismissed.

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BOWEN, L.J. I agree.

KAY, L.J. I am of the same opinion. The agreement in question is plainly an agreement for purchase. It begins by stating that it is an agreement for the hire and purchase of furniture. Then the hirer agrees to pay, by way of rent for the hire and use of the furniture, the sum of 1*l.* on May 6, and the further sum of 96*l.* 4*s.* on August 1, 1892; and the last clause provides in effect that the goods shall become the sole and absolute property of the hirer when the two sums, amounting to 97*l.* 4*s.*, have been paid. No doubt, therefore, it is an agreement for purchase. The case is clearly within s. 9, which seems to have been intended to cover this very kind of transaction.

Appeal dismissed.

Solicitor for appellant: *Alfred Ashley.*

Solicitor for respondent: *John Attenborough.*

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ERRATA.

<i>Page</i>	<i>Line</i>	<i>For</i>	<i>Read</i>
308	12 from top	Bowen and Fry, L.JJ.	Bowen and Kay, L.JJ.
314	17 from bottom	the appellant, the occupier of the lands.	the owner of the rent-charge.
321	note (1)	190	191