countenanced for putting an end to them. The lessor if he pleased might certainly have provided against the change of occupancy as well as against an assignment, but he has not done so by words which admit of no other meaning—' assign transfer and set over ' are mere words of assignment—' otherwise do or put away ' signifies any other mode of getting rid of the premises entirely and can not be confined to the making of an underlease.'' The court makes no direct reference to the words in the covenant '' or otherwise part with . . . the premises demised '' but it is clear that the Court included them in their interpretation of the covenant as not precluding the lessee from subletting for that, according to the passage from the judgment of Bailey J. which I have just read, was the question before the Court. I think then on the authority of this case and in the absence of authority to controvert it I am bound to hold that there has been no breach of covenant here and that defendant's claim to forfeiture is bad.

Deciding as I have done that there has been no breach of covenant I need not deal with the question of waiver raised here, but without giving any definite decision on the point I may say that after considering the numerous authorities cited to me in argument I incline to the view that the application of rent paid in advance after knowledge of the alleged breach of covenant coupled with the fact that no decisive step was taken by defendant until August would incline me to the view that a waiver of an alleged breach of covenant had taken place. I therefore grant the order as prayed by the plaintiff and give him the costs of the action.

GUNPAT CHOWDAREE *v.* JAGAI.

[Civil Jurisdiction (Young, C.J.) August 23, 1923.]

Bills of Sale Ordinance 1879[1]*—definition of '' bill of sale ''—non-compliance with provisions as to attestation and registration—document void as a bill of sale—whether clauses divisible from covenants which operate as a bill of sale are likewise void.*

Jagai entered into an agreement for the use of Gunpat Chowdaree's leasehold property as a dairy farm '' subject to the legal right of Gunpat Chowdaree to possession '': Jagai was to take the profits of his dairy farming and was to pay to Gunpat Chowdaree all rents, rates and taxes due on the land. Jagai agreed to pay by instalments the value of the chattels and fences on the property and not to sell or dispose of any of the same without written consent until the agreed value was paid.

HELD—(1) An agreement containing clauses for sale and purchase of chattels and conferring a lien or charge for the purchase money in favour of the vendor over the chattels sold is a Bill of Sale and is void if unregistered.

(2) Covenants contained in clauses of the agreement but divisible from the covenants which operate as a Bill of Sale are not likewise void.

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[1] *Cap.* 179.

[**EDITORIAL NOTE.**—The definition of " bill of sale " in the Bills of Sale Ordinance, 1879, was identical with that in s. 3 of the Bills of Sale Ordinance (Cap. 179) (Revised Edition, Vol. III, p. 2141.]

Cases referred to :—

(1) *Davis v. Goodman* [1880] 5 C.P.D. 128 (S. Af.); 49 L.J.Q.B. 344 ; 42 L.T. 288 ; 7 Dig. 81.

(2) *Roe v. The Mutual Loan Fund Limited* [1887] 19 Q.B.D. 347. 7 Dig. 59.

(3) *In re Hall, ex parte Close* [1884] 14 Q.B.D. 386 ; 54 L.J.Q.B. 43 ; 51 L.T. 795 ; 7 Dig. 19.

(4) *Marsden v. Meadows* [1881] 7 Q.B.D. 80 ; 50 L.J.Q.B. 536 ; 45 L.T. 301, 7 Dig. 8.

(5) *McEntire v. Crossley Bros.* [1895] A.C. 457 ; 64 L.J.P.C. 129 ; 72 L.T. 731 ; 7 Dig. 16.

(6) *Manchester Sheffield Lincolnshire Railway v. North Central Wagon Company* [1888] 13 A.C. 554 ; 58 L.J.Ch. 219 ; 59 L.T. 730 ; 4 T.L.R. 728 ; 7 Dig. 4.

(7) *Ex parte Crawcour—In re Robertson* [1878] 9 Ch. D. 419 ; 47 L.J. Bcy. 94 ; 39 L.T. 2 ; 7 Dig. 16.

(8) *Charlesworth v. Mills* [1892] A.C. 231 ; 61 L.J.Q.B. 830 ; 66 L.T. 690 ; 7 Dig. 5.

(9) *Coburn v. Collins* [1887] 35 Ch. D. 373 ; 56 L.J.Ch. 504 ; 56 L.T. 431 ; 3 T.L.R. 419 ; 7 Dig. 13.

(10) *Davies v. Rees* [1886] 17 Q.B.D. 408 ; 55 L.J.Q.B. 363 ; 54 L.T. 813 ; 2 T.L.R. 633 ; 7 Dig. 53.

(11) *Pickard v. Sears* [1837] 112 E.R. 179.

ACTION FOR MONEYS PAYABLE under an agreement. The facts are fully set out in the judgment.

C. Mann for the plaintiff.

R. Crompton for the defendant.

YOUNG, C.J.—This is a case in which the plaintiff founds his claim upon a certain agreement dated the 9th day of November, 1922, and made between the parties to the action ; with the exception of a further small claim for money paid by the plaintiff for the defendant at his request.

At the close of the evidence of the plaintiff Mr. Crompton of counsel for the defendant raised the objection in law that the agreement of the 9th November, 1922 (exhibit B), was fraudulent and void in that it did not comply with the Bills of Sale Ordinance No. 3 of 1879.

In the course of his argument he submitted that the agreement (exhibit B) came within the definition of a Bill of Sale under s. 3 of the Bills of Sale Ordinance, and in such case was fraudulent and void since it did not comply with the requirements as to attestation and registration prescribed by s. 8 of the Ordinance. He further submitted that if void, it was void for all purposes, and did not admit of one part being treated as divisible from another.

Mr. Mann in reply submitted that the defendant having derived benefit under the agreement was estopped by his conduct from now treating the agreement as invalid. The point has been argued at considerable length, and a great number of cases have been cited on either side indicating the complex nature of the point in issue. Defendant's

counsel has in the first place pointed out that by the provisions of s. 8[1] of the Bills of Sale Ordinance, 1879, a Bill of Sale not complying with the requirements of the section in respect of attestation and registration shall be fraudulent and void and that there is no limitation to this provision, as in the case of the corresponding section—No. 8—of the Bills of Sale Act, 1878[2] (Imperial). Under that section there is a limitation, rendering an unregistered Bill of Sale void for specific purposes, and not void as between grantor and grantee (see *Davis v. Goodman*, 5 C.P., 1879-80, p. 128.)

Mr. Mann submits that a similar limitation should be read into our local Bills of Sale Ordinance. I can gather no such intention from the Ordinance itself and am not prepared to place any such interpretation upon the section. The words must be construed in their ordinary meaning and without any limitation.

In this connection I would point out that a similar provision is to be found in s. 9 of the Bills of Sale Act, 1882 (Imperial) which provides that a Bill of Sale which is not in accordance with the schedule form is void without any limitation whatever. The principal therefore of a Bill of Sale given by way of security for the payment of money being void *in toto* has been accepted by the English Legislature.

Mr. Mann further submits that the defendant is estopped by his conduct from now treating the Bill of Sale as invalid. True, according to the evidence, he has enjoyed the use of the lands and the chattels referred to under the agreement, but it cannot be said of him in the language of *Pickard v. Sears*, 6A and E. at page 474, " that by his words or conduct he wilfully caused the plaintiff to believe in the evidence of a certain state of things and induced him to act on that belief, so as to alter his own previous position." There is no evidence that the defendant induced the plaintiff to alter his position, nor that the plaintiff altered his position in consequence of the defendant's statements. The nearest decided case I can find in support of Mr. Mann's argument is that of *Roe v. The Mutual Loan Fund Limited* (19 Q.B.D., 1887, p. 347). In that case the Court of Appeal held, reversing the judgment of Pollock, B., that the plaintiff in the case the grantor of the Bill of Sale having in bankruptcy proceedings treated a Bill of Sale as valid, and obtained thereby an advantage to himself, could not in a subsequent action allege that the Bill of Sale was invalid so as to entitle him to recover in the action. The facts in the present case are readily distinguishable, the defendant has not treated the agreement (Exhibit B) as valid for the purposes of one set of legal proceedings, and gained an advantage thereby, and now turned round and treated it as invalid ; he had in the first instance come into Court and denied the validity of the agreement (exhibit B) as being fraudulent and void for not complying with the provisions of the Bills of Sale Ordinance, 1879 ; and assuming that exhibit B is a Bill of Sale it is certainly fraudulent and void for non-compliance with the requirements as to attestation and registration of section 8 of the Ordinance.

And now I come to the fundamental objection raised in the case. Is the agreement of the 9th November, 1922 (exhibit B), a Bill of Sale within the meaning of section 3 of the Bills of Sale Ordinance, 1879.

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[1] *Vide s. 7 of the Bills of Sale Ordinance (Cap. 179) (Revised Edition Vol. III p. 2142.)*
[2] *41 & 42 Vict. c. 31.*

Against any such finding Mr. Mann has cited the following cases :—

1. *In re Hall, ex parte Close*, 14 Q.B.D., p. 386.
2. *Marsden v. Meadows*, 7 Q.B.D., p. 80.
3. *McEntire v. Crossley Bros.*, A.C. 1895, p. 457.
4. *Manchester Sheffield and Lincolnshire Railway v. North Central Wagon Company*, 13 A.C., p. 554.
5. *Ex parte Crawcour—In re Robertson*, 9 C.D., p. 419.

After examining the facts upon which these cases respectively were decided I have come to the conclusion that the facts in the present case would not justify my following the decision arrived at in any one of those cases, inasmuch as I am satisfied that there was no pledge of chattels as in *Hall's* case, nor can exhibit B be construed to be a hiring agreement as in the last three cases referred to ; and in *Marsden v. Meadows* there was no question of any charge over the property transferred. The case of *Charlesworth v. Mills* (61 L.J.Q.B. 1892, p. 30) was also cited by the learned counsel ; in my opinion it is of no application for the last mentioned reason.

By the agreement, clause 1, defendant is permitted to carry on upon the lands mentioned the business of a dairyman and for that purpose to have the use of the lands subject to the legal right of the plaintiff to possession, together with the chattels and fences referred to.

By clause 2, defendant is to pay £40 down to plaintiff, and £10 on the ninth day of each month until he has paid the sum of £330, which is the agreed value of the chattels and fences.

Clause 6 clearly confers on the plaintiff a charge on the chattels or fences when it provides that the defendant shall not until payment in full of the £330 sell or dispose of any of the chattels or fences without the consent in writing of the plaintiff and contains a further covenant for replacing chattels sold, lost destroyed or worn out.

Is not the true effect of these clauses first a sale of the chattels and then a regrant by way of charge to give the plaintiff a security for his purchase money ? The plaintiff in his evidence has said " I agreed to sell the dairy cows, etc. (25 cows, 1 bull, milking-pails and dairy utensils, 12 or 14 calves); defendant was to pay £40 in cash and £10 per month." Exhibit B, clause 2, gives effect to that agreement and security is taken in clauses 5 and 6. S. 3 of the Bills of Sale Ordinance, 1879, defines a Bill of Sale, and includes, *inter alia*, " Any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred."

If I had had any doubt as to the nature and effect of clauses 2, 5 and 6 it would be set at rest by the case (not cited in argument) of *Coburn v. Collins*, 35 C.D., p. 373. The facts in that case are somewhat complicated by the property in question being the subject matter of a trust, but the agreement itself is clear enough. Clause 1 of that agreement provided for the sale of certain property, clause 2 for the purchase, clause 3 created a lien or charge on the property sold for the payment of the agreed purchase price.

It was held that under the agreement the property in the chattels passed, and that the clause in the agreement conferring a lien or charge for the purchase money operated as a Bill of Sale within ss. 4 and 8 of the Bills of Sale Act, 1878, and not having been registered was void.

I have decided that under clause 2 of exhibit B there was a sale, i.e., an agreement to sell and an agreement to purchase, and I have further decided that clauses 5 and 6 of exhibit B confer a lien or charge for the purchase money in favour of the plaintiff over the chattels sold. It follows therefore that the agreement, in my opinion, operates as a Bill of Sale, and is fraudulent and void pursuant to s. 8 of the Bills of Sale Ordinance, 1879.

There remains now the question as to whether the agreement being void as a Bill of Sale contains any covenants which may still be valid. Mr. Crompton submits that the provisions of the agreement are not severable in that it does not operate as a letting of land, nor as an assignment or separate taking of land, but merely the use of the land with permission to carry on the business of a dairyman. In this connection clause 1 provides for the use by the defendant of the lands referred to subject to the legal of plaintiff to possession—what meaning was to attach to these concluding words the plaintiff has failed to explain ; further by clause 3, the defendant is to be entitled to the whole of the profits from the dairy and lands ; and lastly under clause 4 defendant is to pay to plaintiff all rents, rates and taxes due upon the lands. It does seem to me that the covenants contained in these clauses are divisible from the covenants which operate as a Bill of Sale, although closely connected it cannot be said that they are inseparable from and dependant upon one another. The plaintiff agrees to permit defendant to use the lands, and the defendant agrees to pay the rents, rates and taxes to plaintiff for the same when due. I do not find that this agreement is to stand or fall whether or no the defendant fulfils the terms of the payment under clause 2 of the agreement, nor do I find that the defendant by the agreement has in any way mortgaged or hypothecated the leases to the plaintiff, or in other words that the plaintiff has any lien or charge in respect thereof.

In the case of *Davies v. Rees*, 17 Q.B.D. 1886, p. 408, relied upon by the learned counsel the Court held that a covenant for the payment of principal and interest formed an integral part of a Bill of Sale and therefore if the Bill of Sale were void it would fail. The covenants referred to do not in my opinion form an integral of a Bill of Sale ; they are separate and independent.

I find therefore that so much of the plaintiff's claim as is founded on the Bill of Sale must fail and that the plaintiff is entitled to recover from the defendant the rent, rates and taxes, if any, in terms of the covenants contained in the agreement.