

tiff to recognize for the payment of rent, to deny that the plaintiff, during the pendency of the process, was his tenant, rightfully in possession and entitled to maintain trespass against the defendant for breach of the plaintiff's possession. The court ordered a verdict for the defendant, and the plaintiff excepted.

Hibbard, Stone, Barnard, and Copeland, for the plaintiff.

Whipple and Pike, for the defendant.

FOSTER, J. The recognizance of this plaintiff, in the landlord and tenant proceeding, did not affect the rights of the parties established by the foreclosure of the defendant's mortgage. The acknowledgment of an obligation to pay rent in case a tenancy shall be found to exist, cannot be regarded as an admission that a tenancy exists. Whatever might ordinarily be the effect of such recognizance in a case where the existence of the tenancy is a disputed question, it cannot have the effect which the plaintiff claims, in a case where it is admitted that the relation of landlord and tenant does not in fact exist, and where the defendant's possession, under judgment of foreclosure, precludes the possibility of the trespasses alleged.

Judgment on the verdict.

BINGHAM, J., did not sit.

EMERSON & ux. v. EMERSON.

In a writ of entry, if the tenant plead *nul disseizin*, and the plaintiff prove a title and prior possession, it is no defence to show a better title in a third person.

If such third person is the landlord of the tenant, and is admitted to defend the action, he can stand no better than the defendant.

WRIT OF ENTRY, for land conveyed to the plaintiffs by William Emerson. Plea, *nul disseizin*. At the September term, 1877, John W. Currier, assignee in bankruptcy of William, was admitted to defend, and he also pleaded *nul disseizin*, with a brief statement that the action was not commenced within two years from the time the cause of action occurred. William, April 24, 1872, conveyed to the plaintiffs the land in controversy, upon the condition that they should support him through life, and they took possession under the deed. They failed to perform the condition, and left the premises in June, 1872. William immediately reentered for condition broken, claiming a forfeiture, and was adjudged a bankrupt in January, 1873. Currier

was appointed his assignee, February 12, 1873, and on the 13th received a deed of the bankrupt's estate. The defendant claims no interest in the premises. He at first leased them of the assignee for six months, at a rent of \$60 a year, and at the end of the lease arranged, by parol, to remain in possession till this suit should be determined. The plaintiffs had notice more than two years before the commencement of the suit that the defendant was occupying as the tenant of Currier. Currier offered evidence of the insolvency of William, and that debts were duly proved to an amount exceeding the value of his estate, which was excluded by the court, subject to exception. Verdict for the plaintiffs. Motion for new trial.

Copeland, Whipple, and Jewell, for the plaintiffs.

Hillard and Currier, for the defendant and assignee.

BINGHAM, J. The defendant is a tenant, and does not claim a freehold estate, still has pleaded *nil disseizin*. This plea admits him in possession claiming a freehold.

If the assignee had, with the plaintiffs' consent, become a party to the suit by an amendment of the writ, standing upon his own rights as assignee, the question would have arisen whether the plaintiffs could maintain this action against him. The only question now is, whether the plaintiffs can maintain it against the defendant. *Dow v. Leach*, 58 N. H. 18.

Judgment on the verdict.

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69	666

HEATH v. SPRINGFIELD FIRE INSURANCE CO.

A person employed by the authorized agent of an insurance company to solicit applications for insurance, receive premiums, and deliver policies, has no authority, by reason of such employment, to consent to additional insurance in other companies; and notice to him of such additional insurance is not notice to the company.

ASSUMPSIT, on a policy of insurance. The policy contained a condition, that if the assured should make any other insurance on the property without the written consent of the company upon the policy, it should be void. The insurance was obtained by Neal, who, without the defendants' knowledge or authority, was employed by C. & G. L., the defendants' agents at Laconia, to solicit applications for insurance, receive premiums for them, and deliver policies. Their agency terminated August 25, 1872, and from that time to January 2, 1875, the defendants had no agent at Laconia. February 3, 1874, the plaintiff,