

Toomes v Conset [1745]

Evidence

The premises, which were the subject of the case, were rented for sixty years. The rent was a secondary security tool against the sum equal to 3.500 pounds. When the rental agreement expired, Toomes, the complainant, wanted possession of the premises and wanted the defendant to vacate the premises.

Problematics

Toomes expected the reconveyance of the premises and wanted to gain possession of premises, as the secondary security had expired.

Resolution

The Court refused to register a land agreement of mortgage as this agreement would contain the right for a bestower to gain full possession of the premises by purchasing it. Such a situation would result in a disadvantage for the borrower. The borrower intended to accept any conditions of the mortgage offered by the bestower.

Toomes received the right for transfer via premises, and later possession, when the payment, which was due to the appellant, was refunded.

This case is a good example of the equity principle, which means that the essence of the case should be more important than its form.

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