

J. E. Jones, for defendant, contended that the amount should be still further reduced.

J. MacGregor, for plaintiff, opposed defendant's appeal, and contended that the amount found by the referee should be restored.

The judgment of the Court (MEREDITH, C.J., MULOCK, C.J., MAGEE, J.), was delivered by

MEREDITH, C.J.:—We think no good purpose will be served by reserving judgment in this case. It has been very fully argued and we are now in possession of all the facts, and the conclusion we have come to is, that the finding of the referee that no good cause existed for accelerating the payments of the mortgage ought not to be disturbed.

That finding standing, the only remaining question as to the seizure under the chattel mortgage is whether anything had been done that was a breach of the provisions of the mortgage, entitling the appellant to take possession, or whether there was default in payment which entitled him to do so.

It is stated by Mr. MacGregor and not controverted by Mr. Jones, seriously at all events, that so far as it was attempted to support the taking of the goods for breach of the conditions of the mortgage in the selling or disposing of parts of the property, a case was not made out.

In a mortgage such as this, of a going concern, the authorities are clear that the mortgagor is entitled to deal with the property in the ordinary course of business. That is an implied condition of such a document; and here what was done was of that nature. There was no parting with or selling of the goods in the sense in which the provision of the mortgage speaks of parting with or selling them.

The only remaining question then is, Was there anything in arrear?

I should, of course, always pay great respect to any statement or deliverance of Mr. Justice Osler, in the Court of Appeal or elsewhere, dealing either with a question of fact or a question of law; but here we have to determine upon the evidence now before us, which is not the same as that before the Court of Appeal, what the proper conclusion of fact is; and, unless we are concluded by the judgment of another