

goods of plaintiff, cannot, if distress is wrongful, rely upon his chattel mortgage as a defence: see *Dedrick v. Ashdown*, 15 S. C. R. 227.

It is not necessary, in my view, to join plaintiff's wife as a plaintiff, but I give leave to add her if it should be necessary at any future stage.

Defendant contends that by proceedings before a County Court Judge under the Overholding Tenants Act, plaintiff is estopped from saying in this action that there was no rent due at the time of the seizure in February, 1902. I do not think there is any estoppel. This action was commenced on 24th February. Plaintiff is entitled to have his rights determined in this action as they then stood. The proceedings under the Overholding Tenants Act were commenced on the 1st April, when another gale of rent had become due. It was no part of the County Court Judge's duty to determine how the account for rent stood in February, nor could he determine as between the parties what is in question in this action.

Upon the other branch of the case, as to the property covered by the chattel mortgage and the sale of it, the Judge, after commenting on the evidence and the findings of the jury, continued:—

We now come to 13th February, 1902. I see no reason why defendant could not waive default and make the agreement which plaintiff alleges was made, and which the jury have found was made, to abandon the seizure. Plaintiff made the assignment of the accounts and the payments of \$15 and \$25, notwithstanding which defendant entered on the 20th and removed the chattels, breaking up plaintiff's establishment; and all the chattels were sold on or about 4th March. . . . The mortgagee took possession on 20th February in violation of his agreement to entirely abandon the seizure. . . . If defendant sold when he had no right to do so, the measure of damages is the extent of the mortgagor's interest in these goods, and as the mortgagor might have been able to work out the debt, or sell the property as a going concern, if he had not been interfered with, the damages are the difference between the real value of the goods to the mortgagor and the full amount of defendant's claim. . . . On this branch plaintiff is entitled to \$1,022.94, against which I allow on defendant's counterclaim \$145 for rent and use and occupation.

On the whole case judgment for plaintiff for \$1,567.94 and costs.