

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B.

MAY 9TH, 1916.

BEST v. RENAUD.

Chattel Mortgage—Absence of Redemption Clause—Acceleration Clause—Discretion of Mortgagee—New Goods Brought on Premises—Seizure of Goods not Covered by Mortgage—Damages—Costs—Counterclaim.

Action for damages for trespass on the plaintiff's property and wrongful seizure of his goods and chattels. The defendant justified under a chattel mortgage, and counterclaimed for the amount due thereon.

The action was tried without a jury at Sandwich.

F. D. Davis, for the plaintiff.

W. A. Smith, for the defendant.

FALCONBRIDGE, C.J.K.B., read a judgment in which he said that there were two great lions in the plaintiff's path: (1) the absence of a redemption clause in the chattel mortgage; (2) the clause "or in case that the mortgagee feel unsafe or insecure or deem said goods and chattels in danger of being sold or removed, of which the mortgagee shall be sole judge," then the whole money shall become due, etc.

There are many cases in the Courts of the United States of America on the question whether a power like this should be exercised reasonably or in good faith. In some States (Wisconsin, e.g.), it is in the sole discretion of the mortgagee.

There was practically no dispute about the facts, except as to the oral evidence on both sides about the plaintiff having the right to sell goods out of the shop, which should be disregarded. It would appear that new goods brought into the shop, to replace those sold or used in the plaintiff's business, would not be subject to the chattel mortgage.

But the defendant seized and took away goods which he had admittedly not the right to take, and these he returned after writ issued. For this and any other matters, if any, in respect of which the defendant's proceedings were irregular, the plaintiff should be allowed \$75 damages.

The plaintiff placed his damages at an altogether absurd figure—\$75 a week for profits, or nearly \$4,000 a year.

The plaintiff should be allowed \$50 costs; the damages and costs should be credited on the defendant's mortgage.

Judgment for the defendant on his counterclaim for the amount due on the mortgage.

Certain sums are to be credited, and the defendant is to have judgment for the balance, without costs.