

their salaries, as was Thomas J. Gormley's, and other expenses, were paid out of the money received; there is no intention of making any charges for seizure under the statute, and the other arrangement having been made and acted upon, the plaintiff cannot now complain.

I accept the statement of the defendants and their witnesses when in conflict with the plaintiff or Thomas J. Gormley.

It was urged at the trial that a case had been made for an account, and *Rennie v. Block*, 26 S. C. R. 356, was relied upon. I do not think the plaintiff has made out any case for an account. The action is not brought to obtain an account, and no such claim is made upon the pleadings.

It appears that on 18th March, 1907, there was owing upon the mortgage \$9,287.33, and the net amount received by the defendants from sales is \$4,375.93, leaving owing on the mortgage \$4,911.40, to which must be added the rent and taxes paid, making the mortgage debt, without adding interest, \$5,344.93, upon account of which there is in Court \$4,576.74.

In the view I take of the case, the action entirely fails, and must be dismissed with costs, and the sum of \$4,576.74, together with interest thereon, be paid out to the defendants.

MABEE, J.

NOVEMBER 25TH, 1907.

TRIAL.

UNIVERSAL SKIRT MANUFACTURING CO. v.
GORMLEY.

Chattel Mortgage—Action by Creditors to Declare Fraudulent and Void—Failure of Proof of Insolvency of Mortgagor—Defect in Chattel Mortgage—Affidavits of Bona Fides—Renewal—President of Incorporated Company—Necessity for Authority from Directors—Construction of Chattel Mortgage Act and Amendments—Seizure under Mortgage—Excess—Inventory—Waiver—Abatement of Action by Assignment of Plaintiffs pendente Lite—Revivor in Name of Assignee—Right of Assignee to Question Validity of Mortgage.

Action (begun 20th June, 1907,) by the plaintiffs, the holders of past due promissory notes given to them by de-