

The appeal was heard by ARMOUR, C.J.O., OSLER, MOSS, LISTER, J.J.A.

W. R. Riddell, K.C., and T. B. German, Napanee, for appellant.

A. B. Aylesworth, K.C., and G. F. Ruttan, Napanee, for plaintiff.

Moss, J.A.:—The defendant seeks to justify the entry upon the plaintiff's premises and the seizure of his goods upon several grounds, but, in my opinion, none of them is tenable.

First, he relies upon the terms of the chattel mortgage from the plaintiff to him as entitling him to take immediate possession without default, there being no re-demise clause. The chattel mortgage does contain, however, a provision enabling the mortgagee to take possession and sell under certain specified circumstances, and this provision is in terms almost identical with that contained in the chattel mortgage in question in *Dedrick v. Ashdown*, 15 S. C. R. 227. Furthermore, it was given as collateral security to a mortgage upon real estate from the plaintiff to the defendant, securing an advance from the latter of \$2,500, payable in instalments extending over a number of years, and it is expressed on its face that it is given as collateral. The nature of the goods and chattels mortgaged and the purposes for which they were employed by the plaintiff also lead to the conclusion that the intention of the parties was that the mortgagor was to retain possession until default. And upon the principles affirmed by the majority of the Supreme Court of Canada in *Dedrick v. Ashdown* (*supra*), wherein the views expressed in *Bingham v. Bettinson*, 30 C. P. 438, were affirmed, and the decisions in the earlier cases were not approved, it is proper to hold in this case that there was by implication a right in the plaintiff to retain possession of the mortgaged goods until default.

Secondly, the defendant relies upon the clause in the chattel mortgage requiring the plaintiff to keep up the amount of the "stock in trade" in the premises so that at no time shall it be of less than the actual cash value of \$2,500. It is difficult to make this covenant fit the condition of things existing when the chattel mortgage was executed. The goods and chattels mortgaged do not partake at all of the character of what is usually known and understood as stock in trade. It is to be observed that the mort-