

It is not disputed that this is a reasonable sum, if any allowance is to be made to the defendant for expenses, &c.

The value, then, at the time of the alleged conversion is \$1,975.40, less \$320, that is, \$1,655.40. The value of the remaining goods may be more difficult to determine, but, in the view I take of the case, it is not necessary to consider this question. If any value is to be placed upon these goods still unsold, a reasonable sum should be allowed for the expense of realizing on them. In any case, therefore, I think the Master is wrong. But it seems to me that no right of action existed. The plaintiff did not pay the \$2,000—he paid only \$1,000 of it—even on his own contention, as shewn in the judgment at the trial of the former action, the other \$1,000 was deposited in the bank to be paid upon the shipment of the goods, and the time for the shipment of the goods had not arrived when he repudiated the agreement and put an end to the deposit. And in any case he did not give his notes. Not having at any time any actual possession of the goods, he never acquired any right to the possession, as he did not pay or tender the purchase money.

Upon the plaintiff attempting to rescind the contract, there were three courses open to the defendant:—

1. Accept the rescission. In that case, the goods revest in him, and the plaintiff is entitled to receive back his money. This was not done—as has been decided.

2. Insist upon the contract—claiming that the goods are the purchaser's.

3. Accept the rescission so far as to put an end to the contract, but retaining the right to sue for damages.

I am of opinion that the evidence here is that the defendant was throughout insisting on the continued existence of the contract, though he may, perhaps, have mistaken his legal remedies. The contract, then, is in full force, and the defendant is simply doing that which seems a natural thing to do under the circumstances, but which I do not say is or is not justified when he takes the goods of the plaintiff, as he does in this case, and sells them to pay himself the purchase money with the proceeds thereof. But, as the plaintiff had not the right to possession, he has no right to bring an action for the conversion alleged, without first paying or