

The amount of rent due was in fact fixed between the parties as being \$231. Defendant issued her warrant to the bailiff for . . . \$393, improperly assuming to include \$162 as for rent of certain tools, but, by notice served on plaintiff several days before the sale, defendant undertook not to make out of the goods more than \$231. No tender of this true amount had been or was subsequently made by plaintiff.

Plaintiff has not established that there was an excessive distress, nor that there was any irregularity or unlawful act in the appraisalment or sale of the goods.

Plaintiff had in his possession small tools of his own and larger ones which were the property of defendant. Some of defendant's tools, on a separation being made by plaintiff himself, were ascertained to be not on the premises but in some other place where plaintiff had been using them, and the suggestion was made by the bailiff that plaintiff could get his own tools when he brought back defendant's, and plaintiff acquiesced in this arrangement. His tools were not, in fact, distrained, were not included in the inventory, and were delivered to him before the sale.

If any special damage had to be awarded in respect of the alleged detention of the tools, it would have been assessed at an inconsiderable sum.

The same remark applies with greater force to plaintiff's books of account, which were not distrained, but locked up in the shop for a while and afterwards returned to him.

Plaintiff has not established any cause of action.

Defendant is entitled to recover on the counterclaim  
. . . \$182. . . .

Action dismissed with costs, and judgment for defendant for \$182 with costs.