

detention. Their counterclaim is for detention, not conversion, and the point of the action in detinue is demand and refusal: *Clement v. Flight*, 16 M. & W. 50.

Plaintiffs were lawfully possessed, and to prove wrongful detention defendants were bound to shew demand and refusal. This they have failed to do. At the trial defendants sought to treat it as a case of conversion. The goods are still in plaintiffs' possession, and being useful for but one purpose—the production of a copyright book—are valueless to any one except defendants. Therefore, it would be unsafe to assume that, if defendants had made a sufficient demand, plaintiffs would have given a refusal, and run the risk of damages to the extent of the value to defendants of an article of no value to plaintiffs. Moreover, defendants, by letter of 20th October, 1904, notified plaintiffs that they would be required to pay \$5 a day for all time they “may hold the goods,” thus plainly informing them that they would be charged for detention. Having so elected, defendants should not now, after the alleged detention, be allowed to shift their ground and charge conversion. But, even treating the counterclaim as one for conversion, there was no demand on the part of defendants or conduct on the part of plaintiffs that would, in my opinion, sustain such a claim.

The counterclaim is, therefore, dismissed with costs.

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MARCH 15TH, 1906.

DIVISIONAL COURT.

FARQUHARSON v. DOWD.

*Fraudulent Conveyance—Action to Set aside—Insolvency of Grantor—Intent to Defeat Creditors—Failure to Prove—Husband and Wife—Husband Going into Business—Absence of Hazard.*

Appeal by plaintiff from judgment of BRITTON, J., 6 O. W. R. 760, dismissing action to set aside a conveyance of land