

With regard to the costs of this appeal and the cross-appeal, there has been part success and part failure, and we think the better course, instead of dividing the costs, will be that they should not be to either party.

My own view—we have not discussed that question—is that all the damage to the business was done, or at least the business would not have been destroyed if defendant had not distrained under the chattel mortgage, and that the proper amount to be allowed would be reached if there were deducted from the damages awarded by the referee what has been allowed for the goods that were distrained for the rent, and there were added to the balance remaining the damages for the interference for the days on which plaintiff was wrongfully interfered with, which would not be considerable, I should think, because defendant is being treated as a wrongdoer from the 11th, and plaintiff is getting damages for the destruction of the business on that day; and it is difficult to see how subsequent interference with it two days afterwards put plaintiff in any worse position, beyond depriving him of the use of the goods. However, if counsel cannot agree, we will consider that and reach a conclusion.

We have a proposition to make to counsel. If they are content to leave it to us to assess the damages, finally, not taking further the question of damages, we will assess the damages. If counsel are not willing to do that, we may probably refer the matter to the referee, and shall have to consider how the costs of the reference will be borne.

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CARTWRIGHT, MASTER.

MAY 5TH, 1906.

CHAMBERS.

PINKERTON v. TOWNSHIP OF GREENOCK.

*Trial—Postponement—Proposed Absence of Witness—Servant of Crown.*

Motion by defendants to postpone trial on account of the impending absence of a necessary and material witness.

G. H. Kilmer, for defendants.

A. R. Clute, for plaintiff.