

well as of her husband, and the question of the ownership of them was unimportant unless the plaintiff should establish that the judgment debt was as against her satisfied. That, however, does not assist plaintiff, as everything that was done after the seizure (for which nothing has been allowed) was done under the authority of the order of the 14th April, 1896, and the judgment pronounced at the trial; and if (as is well settled) an execution creditor is not liable for any loss which is sustained by one whose goods are wrongfully seized as being the property of the execution debtor, which happens after the making of an interpleader order, I am unable to see how the defendant, Paul A. Boulton, is liable for any damage which plaintiff suffered owing to anything that was done under the order and judgment. . . .

[Walker v. Odling, 1 H. & C. 621, and Mayne on Damages, 7th ed., p. 439, referred to.]

What in this case was done under the order of 14th April, 1896, and the judgment pronounced at the trial, was not, I think, the approximate consequence of the efforts of defendants to enforce the Biggar judgment against the plaintiff, and the seizure of her goods under the execution issued upon that judgment.

What was paid to the sheriff for his expenses is, to the extent of what was incurred before the date of the order, properly allowable, as that was the direct consequence of the wrongful enforcing of the execution against plaintiff's goods.

I am unable to agree with the argument of defendants' counsel as to classes 1 and 2.

Had the act which caused the damage to plaintiff been that of some one other than the defendants, for which defendant Paul A. Boulton was liable on the contract of indemnity, it is not open to doubt that he would have been liable to indemnify the plaintiff against the costs properly incurred, between solicitor and client as well as between party and party: Mayne on Damages, 7th ed., p. 94: and I see no reason why, where the act is that of the very person who has agreed to indemnify her, the plaintiff should be in a worse position.

All the costs of the action were not, however, incurred in resisting the attempt to enforce the Biggar mortgage against plaintiff and in obtaining relief against it. The action was brought also to recover damages for breach of the contract to indemnify, and to the costs of such action the contract of indemnity does not, of course, extend.