

# NOTES OF CASES, ONTARIO.

FIFTH DIVISION COURT | [AUG. 3, 1897.  
Northumberland and  
Durham.  
KETCHUM, J. J.]

KERR v. ROBERTS.

*Chattel Mortgage—Renewal.*

Plaintiff and defendant were mortgagees of the same chattels; defendant, under a mortgage made in December, 1889, and plaintiff under one made in February, 1894. Both mortgages were made in good faith and for valuable consideration. The plaintiff's mortgage was duly renewed in 1895, 1896 and 1897. Statements, duly verified and intended to renew defendant's mortgage, were filed in each year from 1890 to 1896 inclusive. Payments were made on defendant's mortgage in 1890, 1891, 1892 and 1896, that in 1890 being the interest payable under the mortgage for that year. In the statements filed on renewal, each of these payments was shown and credited, but in the statement of the year in which it was made only. Thus the statement of 1891 contains no reference to the payment made in 1890, and shows and credits the payment made in 1891 only. The statement of 1892 contains no reference to the payments made in 1890 and 1891, and shows only the payment made in 1892. The statements of 1893, 1894 and 1895 contain no reference to any payments, and show none; and the statement of 1896 contains no reference to the earlier payments, and shows only the payment made in that year. And the statements as to payments made are, in effect, as follows: In 1891 and 1892, that no payments have been made on account of the mortgage, except the payment made in that year; in 1893 and 1894, that no payments have been made on account of the mortgage *since last renewal*; in 1895, that no payments have been

made on account of the mortgage; and in 1896, that no payments have been made on account of the mortgage, except the payment made in that year. But the mortgage account, in the statements after 1891, is carried on from year to year as a continuous account, balanced yearly, beginning in each case with the balance or amount still remaining due at the date of the former statement, and dealing only with the charges and credits of that year. In the statement of 1891 the account begins as follows: "Principal, \$150.00." A charge for interest for a year, and another for costs of renewal, are added, and the payment of that year is deducted, leaving a balance of \$136 as the amount still remaining due. The account in 1892 begins with that balance, described as "Principal as per last renewal, \$136.00," to which charges are added for interests and costs, and the payment made in 1892 is deducted, leaving a balance that is carried forward as the beginning of the account in the following year. This process is repeated in each of the succeeding years, except that, as already stated, there is no credit or deduction in any year in which no payment was made, and in each statement the first item in the account is referred to as being the balance shown by the previous statement. There is, also, in each of the renewals from 1891 to 1896 inclusive a statement that the mortgage had been previously renewed, mentioning the year or years in which it was so renewed. In April, 1897, the defendant seized and sold the chattels under his mortgage, and received the proceeds, amounting to \$135. The plaintiff sued to recover those proceeds, claiming \$100 and abandoning the excess, contending that the defendant's mortgage had not been legally renewed, and that it had ceased to be valid as against him. For the defendant, it was argued that the course pursued in the re-