

was things which were not covered by the chattel mortgage which were sold.

The fact of the defendant being a purchaser of some of the articles at this sale is not therefore material. It appears that there was due for rent the sum of \$116.35, and the bailiff realised for defendant \$103, after paying \$22.50 for taxes, a statutory claim, and \$10, costs of distress. There was another distress for one month's rent, \$25. This sale realised \$88, of which \$30 was paid over to one of the debtors after payment of the month's rent and costs, and the balance due on the previous transaction.

Later there was a distress for two months' rent, June and July, and the amount realised was \$27.57, of which \$23 was paid over to Campbell by the bailiff. Beyond this the defendant Campbell has realised nothing, and that which he has realised has been by virtue of the warrants of distress, not the chattel mortgage which the defendant himself, apparently, regarded as useless.

If the plaintiff had intended to attack the proceeds to recover the rent, because they were fraudulent and collusive, and as part of the scheme to prefer creditors or to defeat creditors, he should have said so in his pleadings. And then he could not have recovered more than the amount of the proceeds, less the rent due.

Apparently under this statute it is not necessary to have the transaction of preference or to defeat, set aside or declared void. The proceeding may be simply one to recover the proceeds. *Beattie v. Holmes*, 29 O. R. 264. But at some time or another he should, either in the statement of claim or in the reply, when the distress proceedings were interposed, have attacked them as fraudulent or as part of the scheme to prefer. He must be taken to go for the proceeds as he found them. The defendant has sworn to the rent being due and there are two answers to the recovery of the last two months' rent. One is that the proceeding was justifiable as the terms of the lease survived, notwithstanding the previous distress, and, second, that it all occurred after this action was brought.

The plaintiff contended that there was some irregularity in the distress proceedings, a want of notice of the sale or something of that kind. The plaintiff cannot raise that question. He is after the proceeds and they are the result of this sale. Besides, under the statute respecting distress