

Court, the law is clear that upon a question of fact the lowest Court is not bound by the finding in another case by the highest Court in the land.

It appears to me that there is upon the facts—leaving out the testimony of the parties or only accepting what they say in part—after discounting their statements as being made by persons desiring each to serve his own case—there remains sufficient in the documents themselves to make it practically conclusive that defendant had applied on the chattel mortgage so much of the money that had been paid by plaintiff as was necessary to satisfy the arrears upon the chattel mortgage.

Upon 11th February defendant issued two warrants, in one of which he directed his bailiff to distrain for \$143.38, being the balance of rent due to him; and in the other to distrain under the chattel mortgage for \$1,600, which he says is the amount owing upon it.

Now, looking at the statement of account, which bears the same date, it is manifest that if he had not before done that, defendant by that act so appropriated the payments made as to discharge the moneys overdue upon the mortgage, for in no other way could there be \$143.38 due for rent.

It is not, I think, open to question that that is the true position of the matter, and, besides, Mr. Johnston's testimony is that there was no pretence that there was anything behind in payments upon the chattel mortgage, but that defendant was asserting the right to take possession in consequence of the payments having been accelerated under the provisions of the mortgage.

Then it appears that there were separate distresses, one upon a comparatively small part of the goods, for the rent in arrear; and that the larger body of goods was seized under the chattel mortgage. .

It appears to us that with regard to the goods that were seized under the chattel mortgage and not for the rent, there being no justification for the seizure, defendant was a wrongdoer, and that he is answerable for the full value of the goods and for the injury that was done in breaking up—if the result was to break up—the business of plaintiff, and that the measure of damages is not what these goods would bring at a forced sale, but what they were worth as the stock in trade of a going concern.