

PETERS v. JOSEPH AND ANOTHER.—*Charge 11.*

JUDGMENT of their Honors the Chief Justice and Mr. Justice Richmond, delivered on Tuesday, 8th January, 1878 :—

In this case the defendants obtained a rule *nisi*, in accordance with leave reserved at the trial, to enter the verdict for them on the first count, on the ground that all the goods proved to have been taken by the defendants were comprised in the bill of sale.

The question is, whether the expression “stock-in-trade,” where used in the bill of sale, comprises tools used by the plaintiff in his trade as a cabinetmaker; if such tools are not so comprised, then the plaintiff is entitled to recover damages in respect of the taking of them under the first count, which is for conversion.

The bill of sale was, as appears from the recitals therein, given by the plaintiff, who was a cabinet-maker, to secure the defendants in respect of goods supplied by them to him for his business as a cabinetmaker.

It assigns all his stock-in-trade on premises mentioned, or other premises occupied or used by him in his business.

We think that there is a clear distinction between stock-in-trade and utensils or tools in trade; and that the first expression does not include what are tools of trade unless there be something in the context extending the expression beyond its ordinary meaning. The stock-in-trade would ordinarily include goods for sale and materials to be worked up into articles for sale; but under neither head would the implements for use in the manufacture of the articles for sale be included. As there is nothing in the bill of sale in this case which does extend the ordinary meaning of the expression stock-in-trade, we think that the defendants did not acquire the tools under it, and consequently that they were guilty of the conversion of the tools, and not entitled to have the verdict on the first count entered for them.

The defendants also obtained a rule *nisi* for a new trial on three grounds. First, that the findings of the jury on the second and third issues were against the weight of evidence, and against the direction of the Judge.

The declaration contains two counts. The first for conversion of the stock-in-trade and tools; the other for trespass on the premises, and the taking and converting the same stock-in-trade and tools.

The first and second issues seem to have been framed so as to be applicable to both counts so far as they aver a conversion of plaintiff's stock-in-trade and tools.

At the trial, and at the instance of the defendants, and against the contention of the plaintiff, the plaintiff was compelled to elect to limit his claim under the first count to the tools, and to proceed under the second count for the conversion of the stock-in-trade; and the jury were directed to deal with the first count as limited to the claim for the conversion of the tools, and they, in consequence, separated the damages, and gave £15 as damages under the first count.

The first and second issues were answered by the jury in the affirmative generally, and the defendants contend that there should be a new trial of the whole record, because of this general finding.

But the contention was based on a misunderstanding. The learned counsel for the defendants argued as if the jury had found that for the purposes of the first count the defendants had, against the direction of the Judge, converted the stock-in-trade as well as the tools, but, inasmuch as the jury were directed to deal separately with each count, limiting the first count to the tools, and the second to stock-in-trade, and to assess damages on each count separately, and as they did assess damages separately, we think, that it does not follow from the general affirmative finding on the first and second issues that therefore they found for the plaintiff under the first count that the defendants converted the stock-in-trade. On the contrary, we think that so much of the first and second issues as applies to the first count limited to the claim for conversion of the tools, is separable from the rest of these two issues, and that the findings upon these issues may be distributed; consequently that the defendants are not entitled to a new trial of these issues on the ground contended for.

The second ground on which a new trial was moved for was that the Judge at the trial misdirected the jury in directing them that the defendants' entry upon the plaintiff's premises and the seizing the goods under the bill of sale were unlawful, because such entry and taking too promptly followed the demand of payment made on behalf of the defendants. It appeared from the evidence that the demand, though made on the plaintiff personally, was made by one who did not show to the plaintiff that he had authority to receive payment, and that the seizure was made instantly after the demand without any interval whatever. This being the case the plaintiff had no time whatever allowed to comply with the demand by seeking the defendants and paying them. For this reason the entry and seizure were too promptly made, for there was no default until the plaintiff had had a reasonable time under the circumstances to comply with the demand; therefore there was no misdirection.

The last ground urged was that the damages given on the second count were excessive. The second count was for trespass on the plaintiff's premises and seizure of his goods, with a claim for special damage. The defendants pleaded a general denial, and justified under the bill of sale already referred to.

The justification failed by reason of the entry and seizure before default, inasmuch as the defendants entered and seized too soon after demand.

It appeared from the evidence that both the plaintiff and the defendants carried on business in Wellington, and within a very short distance of each other, consequently but a short time would under the circumstances have been reasonably sufficient for the plaintiff to seek the defendants.

If the plaintiff had been able to pay and had required time to get the money from his bank or other place of deposit, he might have been entitled to a reasonable time for that purpose; but it is manifest from the evidence that he was utterly unable and unprepared to pay.

The debt with which the goods were charged was, as found by the jury, £908. The value of the goods sold, if calculated on the basis of Diamond's valuation and the plaintiff's own evidence as to subsequent transactions, was £514. The evidence of the plaintiff put it higher, but we think it manifest that the weight of evidence was that the value of the goods was less than the amount of the debt. It