IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1979/W070

BETWEEN	ALPHEOUS WRIGHT	PLAINTIFF
AND	JOSEPH CAMERON	DEFENDANT

W. Bentley Brown for plaintiff.

John Sinclair, instructed by Silvera and Silvera for defendant.

1980: October 6, 7; December 18

Patterson, J. (Ag.):

The plaintiff in this action is seeking to recover damages from the defendant for "illegal levy and unlawful seizure, trespass, trespass to goods, detinue and conversion of goods and chattels lawfully belonging to the plaintiff." The plaintiff alleges that on the 13th February, 1979, the defendant, who was his "landlord and proprietor" in respect of premises situate at No. 7 McSun Avenue, Kingston 11, in the parish of St. Andrew, along with other persons unknown -

> " unlawfully, maliciously and wrongfully levied seized and detained one dining table, one drawing room suite, one stereogram and one amplifier set and converted same to their own use and benefit and have wilfully committed an act of trespass and removed the said goods and chattels to premises situated at 6, Cassville Avenue, Kingston 10, in the parish of Saint Andrew. The Defendant has not returned the said goods and chattels to the Plaintiff but still detain the same and refuse to return the said goods to the Plaintiff despite repeated demands. "

The defendant, in his pleadings, denies that "he is or ever has been the "landlord and proprietor" of the aforementioned premises, and denies all the allegations in the plaintiff's statement of claim. The plaintiff, in his reply, has stated that the defendant, being the husband and agent of the owner of the premises, comes within the definition of "landlord" under the Rent Restriction Act, and it was he who rented the bungalow to the plaintiff.

The plaintiff gave evidence and called his wife as a witness. His case is that sometime in the month of September, 1978, he along with his wife, entered into an oral agreement with the defendant for the rental of a bungalow at premises No. 7, McSun Avenue, in the parish of Saint Andrew, on a monthly tenancy, commencing on the 15th September, 1978. The rent was agreed at $130.00 per month, payable in advance on the 15th day of each month. The rental contract was silent on the question of payment for the supply of electricity to the bungalow, excepting that the defendant told them that the lights had been "cut off" but that the meter had been bridged. The bungalow had a separate electric meter to that which was in the main house on the said premises.

The plaintiff and his family moved into the bungalow, and all went well until the 6th January, 1979. On that day the defendant presented a light bill for $265.00 to the plaintiff and his wife and told them to pay it. The plaintiff refused to pay and reminded the defendant that he had said the lights had been cut off and the meter bridged; consequently, any bill he received must be in respect of electricity supplied before the service had been disconnected. The defendant was obviously annoyed at the plaintiff's refusal to pay the light bill, but he left taking the bill with him.

On the 15th January, 1979, the rent of $130.00 was tendered to the defendant by the plaintiff's wife. She usually paid the rent on behalf of her husband. The defendant refused to accept the amount tendered, saying he did not want it, they should take the rent and find some other accommodation. The plaintiff's wife kept the amount and started searching for alternate accommodation.

On the 13th February, 1979, at about 8:30 a.m., whilst the plaintiff and his wife were inside the house, the defendant, accompanied by several other men, came to the yard. The plaintiff's wife spoke with a man through a window which she had opened, and that man asked if she owed the defendant any money. She told him that she owed defendant $130.00 which she had tendered and he had refused to

accept. The man, whom she later identified as Mr. Stanford Robinson, a landlord's bailiff, asked for her last receipt, and when she presented the December receipt to him, he grabbed it away and it was never returned to her. This was done in the defendant's presence. The defendant then called for a crow-bar, and used it to commence breaking open the door to the bungalow and then handed it to a man who completed the breaking. The defendant, accompanied by Mr. Robinson and other men, then entered the house through the broken door, and the bailiff and his men removed the items of furniture mentioned in the statement of claim. The plaintiff asked to be allowed to remove money, $200.00, which was under a cushion of the settee, and the defendant then told one of the men to thump the plaintiff in his mouth, and the man did just that, injuring the plaintiff. In removing the furniture, several items were damaged. The bailiff did not leave an inventory of what had been taken, and when the items of furniture were being taken away by a truck, the defendant called out that they could be redeemed at 6, Cassville Avenue.

Plaintiff and his wife went to 6, Cassville Avenue, the following day, and saw the items of damaged furniture, but they were not returned to them.

No rent had been demanded before the various items of furniture were removed that day, and despite repeated demands, the defendant had not returned the items of furniture.

Special Damages claimed amounted to $5,500.00 which represented the cost of the items of furniture taken, loss of use $200.00 and the amount of cash ($200.00) which was in the settee.

The plaintiff denied that the tenancy agreement was concluded between Miss Sarah Burke and himself; that the effective date of the tenancy was the 10th September, 1978, and that the rent was payable on the 10th of each month. He denied that at the time of the levy two months' rent was in arrear. He said that neither the defendant nor Miss Burke demanded the rent on either the 18th January, 1979, or on the 26th January, 1979, and that he did not curse or threaten either of them at any time. On the 13th February,

1979, the defendant did not demand two months' rent nor did the landlord's bailiff when he arrived.

The defendant gave evidence and called as his witness Mr. Stanford Robinson who was a landlord's bailiff at the material time. The defendant said that he is the husband of one Sarah Cameron (nee Burke) and that he married her in June, 1979. Prior to that date, they both lived together at 7, McSun Avenue, which is owned by his wife. He admits that she is old and "sick with her head and everything" and that she really cannot manage.

He said that he first met the plaintiff on the 6th September, 1978, when the plaintiff came alone to the bungalow where a painter and himself were carrying out repairs. He took the plaintiff to Sarah Burke, and it was she who arranged with him for the rental of the bungalow at $130.00 monthly. There was no discussion about electricity - the rent of $130.00 included "water, electricity and everything." The meter which served the bungalow was on his house and it had never been bridged.

The plaintiff paid the rent to Miss Burke on the morning of the 10th September, 1978, but it was he, the defendant, who wrote the receipt as Miss Burke is unable to write - "her eyes are dark and she is kind of goofy and was under the doctor's treatment." That very day, in the afternoon, the plaintiff and his family took up residence in the bungalow. The plaintiff himself paid the rent to Miss Burke for the months of October, November and December, 1978, and again it was he who issued the receipts for those months. He said that in January, 1979, he did not see the plaintiff come in with the rent and so he waited for a few days, giving them time to come in. On the 18th January, 1979, he went over to the bungalow and asked both plaintiff and his wife for the rent. The plaintiff told him that he was not going to pay any rent nor was he leaving the house. On the 26th January, 1979, he again went to the plaintiff for the rent, and the plaintiff cursed him and swore at him. He made a report to Miss Burke and when she went to collect the rent, she was similarly treated.

On the 13th February, 1979, early in the morning, he went again to the plaintiff and asked for the rent. The plaintiff threw three stones at him; he had to run away. He went to the Police Station and to the Clerk of the Courts where he made reports and received advice. He then went to the landlord's bailiff (Mr. Robinson) who along with four men, accompanied him to the premises.

On arrival at the premises, the defendant said he took the bailiff to the plaintiff's doorway and rapped on the door. The plaintiff's wife opened a window and he told the bailiff that she was the wife of the man who rented the premises. Mrs. Wright then called to her husband and he joined her at the window. Defendant then pointed out the plaintiff as the man who rented the premises. The defendant said that he then left and went away to his backyard to feed his chickens.

The defendant denied going in the plaintiff's house and that he had instructed a man to punch the plaintiff. He denied removing goods from the premises, and that he was present when the goods were being seized and removed, and that he detained the goods. He denied speaking with the plaintiff about a light bill and demanding payment. He denied that the plaintiff's wife tendered the rent for January and that he refused it. He said he instructed the bailiff to distrain for two months' rent which was due and owing for January and February, 1979, since the tenancy date was the 10th of each month and not the 15th.

Stafford Robinson, a landlord's bailiff, gave evidence of having distrained on the goods on the instructions of the defendant. On arrival at the premises, he first spoke with Mrs. Wright, who was at a window. He said he told her his mission and eventually he saw the plaintiff. He told Mrs. Wright that he was going to levy and as he started to enter the apartment, she blocked his passage by attempting to close the door. One of his men forced himself in and he also entered and started to levy. The plaintiff prevented him from so doing and a fight ensued between his men and the plaintiff.

It was then that some of the goods that he had distrained on were damaged; some were badly damaged, and two of his men as well as the plaintiff received injuries. The goods were taken to his storehouse at 6, Cassville Avenue. He said he left an inventory of the goods distrained inside one of the rooms as when he tried to give it to Mrs, Wright out on the road, she refused to accept it. He eventually sold the goods for $180.00 which went towards his expenses. He had not heard anything said about cash being hidden under the cushion of the settee.

He said that Mr. Cameron pointed out the premises to him, and apparently introduced Mrs. Wright as one of the tenants and then left. Mrs. Wright had told him that she did not owe any rent, but he had not asked her for her last receipt as he was satisfied that the rent was owing. He could not now remember how many months' rent he had been instructed to distrain for, nor could he recall the amount, but it was for either two or three months, and he was not sure if it was for $180.00 or less. He had no records to refresh his memory as he was no longer a landlord's bailiff and he had destroyed all his records.

I found the recollection of this witness rather hazy. He admitted that it was only the Sunday before that he had been informed that he would be required to give evidence, and that he had not known the parties before the day of the levy.

The first issue to be resolved is the nature of the relationship between the plaintiff and the defendant. The relationship of landlord and tenant arises where the owner of an estate in land grants to another an estate less than a freehold and less than he himself possesses in the land. The relationship may be created in a number of ways; by an express grant by way of demise; by a contract for a lease; by operation of law, being but a few of those ways. But a person may demise lands to which he has no title to create a tenancy in interest; the effect of such a demise may be that he creates a tenancy by estoppel between himself and the tenant. In cases under seal, this doctrine rests properly on estoppel, but it

has been extended to written and oral tenancies where it is based on a special doctrine, developed by analogy from leases by speciality, and peculiar to the relationship of landlord and tenant.

In E. H. Lewis & Son Ltd. v. Morelli and another (1948) 2 All E.R., 1021, Harman J. had this to say about the doctrine

> " We do not think it operates by estoppel strictly so called in cases where there is no writing. The belief of the tenant in his landlord's ability to grant the term is not essential. Thus, an essential feature of an ordinary estoppel in pais, namely, reliance on the truth of the representation made, may be lacking. It is, therefore, a special doctrine developed by analogy from leases by speciality and peculiar to the relationship of landlord and tenant. That the doctrine exists we feel no doubt, and, if it does, so does its converse, namely, that, a landlord having by his offer of a tenancy induced a tenant to enter into (or remain in) occupation and to pay rent, cannot deny the validity of the tenancy by alleging his own want of title to create it. "

But quite apart from the doctrine of estoppel, the plaintiff pleaded that "the defendant, being the husband and agent of the owner of the premises, comes within the definition of 'Landlord' under the Rent Restriction Act."

In my judgment, however, the definition of "Landlord" contained in the Rent Restriction Act is peculiarly for the purposes of the Act, and on the facts of this case, it has no bearing on the issue at hand.

On this issue, I find that a valid oral contract of tenancy was made between the plaintiff on the one side and the defendant on the other; that Miss Burke was not a party to the contract - indeed her physical and mental condition precluded her from transacting any such business; and that the defendant did not disclose that he was acting for or was the agent of Miss Burke. By virtue of that contract, the plaintiff went into possession and remained in possession, paying a monthly rental of $130.00 per month to the defendant as his landlord. I hold that the plaintiff was in truth the tenant of the defendant, and as between them the defendant cannot deny the validity of the tenancy by alleging his own want of title to create it.

The next issue to be determined is the operative date of

the tenancy and the date on which the rent became due each month. This is a question of fact. The plaintiff himself has not been helpful; he admitted that he did not remember the date the premises were rented, but in cross-examination, he did say that he recalled that his wife and himself inspected the premises on the 6th September, 1978. The rent for the first month was paid before they moved in, and they moved in about one week after the rent was paid. He did not remember if it was the 10th September that they moved in. His wife emphatically stated that the rent agreed on was $130.00 per month, payable on the 15th of each month. She denied that the rent was due on the 10th of each month. The defendant on the other hand said that he first met the plaintiff on the 6th September, 1978, when he came to the premises which was being painted, and it was agreed then, between Miss Burke and the plaintiff, that the rental would be $130.00 per month. On the morning of the 10th September, 1978, the plaintiff paid the month's rent to Miss Burke and moved in that very evening. He denied that the rent was due on the 15th of each month. He said the rent was paid on time each month, up to December, 1978, but in January, it was not paid on time and since they usually paid on time, he waited for eight days before asking them for it on the 18th January. It is admitted by the parties that receipts were issued for each month's rent paid up to December, 1978, but the plaintiff did not produce any of those receipts which may have proved helpful in deciding the issue of the rent date. It is admitted that the rent was usually paid on time. The plaintiff and his wife were both gainfully employed. The defendant did not impress me as being a very truthful witness. He was quite evasive at times, and I cannot place much reliance on his evidence. On the other hand, the plaintiff himself was not very helpful; it did not appear that he exercised much control over the running of his household, and consequently, he was not able to help the court to any great extent. His wife appears to be the leading figure in the business transactions of the family, and she impressed me as being both businesslike and truthful. On a balance of

probabilities, I find that the operative date of the tenancy was the 15th September, 1978, although payment of the first month's rent may have been made on the 10th September, 1978. It is not unusual for a payment to be made to secure a tenancy even before the premises are ready for occupation. I find that the rent became due and payable on the 15th of each month and not on the 10th as the defendant claimed.

I accept the evidence of the plaintiff and his wife as to what transpired on the 6th January, 1979; that they refused to pay the electricity bill because they had been told that the service had been disconnected but that the meter had been bridged. It could be that because electricity was being illegally supplied to the bungalow, neither the plaintiff not the defendant made any positive arrangements for the payment of light bills. The defendant said he did not tell the plaintiff that the meter had been bridged; the meter on the premises which served the bungalow, had not been bridged. He said the rental of $130.00 per month included "water, electricity and everything" even though there was a separate meter for the bungalow. I do not accept the defendant's evidence on this issue. I find that there was no agreement about the electricity supply because current was being illegally obtained.

I believe the plaintiff and his wife that on the 15th January, 1979, the rent of $130.00 was tendered by the plaintiff's wife to the defendant who refused it saying he did not want it, they should take it and find somewhere else to go. I reject the defendant's evidence of what he says transpired on the 18th and 26th January, 1979.

I come now to the 13th February, 1979. I accept the evidence of the defendant that early the morning, he went to the plaintiff's house and demanded the rent, but I find that it was not two months' rent as he would have me believe, but only the rent for January, which had been tendered to him and which he had refused to accept on the 15th January, 1979. It is plain that the plaintiff refused to pay on the 13th February, consequently, the

defendant sought the services of a landlord's bailiff.

The landlord's right to distrain for rent in arrear cannot be denied. A distress is the taking, without legal process, cattle or stock, produce or goods, which are on the demised premises (or which have been fradulently removed from such premises) to compel the satisfaction of arrears of a fixed rent. Distress is one of the most ancient remedies for the recovery of rent, and until recently, this common law remedy was given statutory recognition by the Landlord and Tenants Act. This Act has now been repealed by the Law Reform (Landlord and Tenants) Act (Act 15 of 1979), and with effect from the 15th July, 1979, the common law remedy was taken away. When this cause of action arose, however, the remedy was subsisting. But a distress cannot be levied until the rent is in arrear. In most cases, by agreement, rent is payable from month to month in advance. A distress can be made or an action maintained for such rent, as soon as it becomes payable according to the terms of the demise. Rent is due in the morning of the day appointed for payment, but it is not in arrear until after midnight of that day.

Where the right to distrain exists, nothing but payment, or something equivalent to payment, such as a tender of the arrear, or a release under seal, will be sufficient to take it away. A distress cannot lawfully be made after the full amount of rent due has been unconditionally tendered to the landlord, or to his agent having authority to receive the rent, and it is refused. A tender made by a stranger, where that person is the agent for the tenant or with his prior authority or subsequent ratification, is sufficient to invalidate a subsequent distress. But a tender of money by the tenant, though refused by the landlord, does not release the tenant from his obligation to pay the rent. The tenant must show that he has always been ready and willing to pay. If, therefore, the landlord demands payment after a prior refusal by him to accept, it appears to me that the rent should again be tendered, and only if it is again refused, would a subsequent distress be illegal on the grounds that a tender was made.

I find that the defendant demanded the rent on the morning of the 13th February, but it was not paid to him. He, therefore, had a right to employ the services of a landlord's bailiff to distrain for rent that was due and owing and in arrear on the 13th February, 1979. Heavy weather was made of the fact that the bailiff did not make a demand for the rent before he distrained, but the making of a distress in itself constitutes a demand, so that an actual previous demand would be unnecessary, In any event, having regard to all the circumstances, the plaintiff must have known that the defendant was there to distrain for the rent owing, and here again no tender was made. Had a tender been made before entry and seizure, either to the bailiff or the landlord himself, then a subsequent distress would be illegal for that reason.

The right to distrain necessarily involves the right to enter the premises where the goods are, for the purpose of taking possession of them. Entry for the purpose of a distress will be good in all cases where admission can be obtained to the demised premises without a trespass being committed. I accept as correct the statement of the law by Lord Esher, M.R. when in Long v. Clarke [1894] 1 Q.B. 119 (at p.121), he said:

> " When a landlord goes into a house to distrain, whether the door be open or shut, he does that which in any other person would be a trespass, and it is just the same if he merely walks across the land to the front door. The sole question is what limitations on the right of the landlord to go on the premises and distrain the law imposes on him. He cannot go into any building or into any house if he can only do so by breaking into it. He can go in at the door, which is the most obvious way of entering; but further, he can get in by a window if it is left open. There is no trespass in doing either of these acts, because he does not break in. "

The paramount issue to be decided in this case is whether or not the levy was illegal. "An illegal distress is one which is wrongful at the very outset, that is to say either where there was no right to distrain or where a wrongful act was committed at the beginning of the levy invalidating all subsequent proceedings.

In such a case the distrainor is a trespasser ab **initio**... "
(Halsbury's Laws of England, 4th Edition. Vol. 13, para. 368)
Where a wrongful act, such as the breaking of an outer door, has been committed at the very outset of the levy, the distress is illegal and the distrainor is a trespasser ab **initio**.

A landlord is liable for an illegal distress levied by a bailiff who is acting within the scope of his authority. For illegal acts outside the scope of such employment, the landlord is not liable without proof that he actually directed them or ratified and adopted them with knowledge of what had been done, or that he chose without inquiry to take the risk upon himself and adopt such acts (see Haseler v. Lemoyne (1858) 5C, B.N.S. 530).

I find that in the instant case, the bungalow door was securely fastened and the defendant, using a crow-bar, commenced to break open that door, and on his direction, one of the men who came with the bailiff completed the breaking open of the door. The defendant, the bailiff and his men all entered the bungalow through the broken door to levy the distress. The defendant, in the circumstances, committed an act of trespass.

I accept the plaintiff's case that the defendant was present during the time that the levy was being made, and that one of the bailiff's men, acting on the instructions of the defendant, thumped the plaintiff in his mouth. The defendant was present throughout the proceedings. I reject the defendant's case that he left the precints of the bungalow before the levy was made. The seizure of the goods was illegal and amounted to a trespass to goods, and the distress was illegal.

It seems unnecessary for me to decide whether or not any further wrongful act was committed in the seizure of more goods than were reasonably necessary to satisfy the claim. If it was, then I would have had no hesitation in finding that in this case the distress was excessive, even assuming that two month's rent was in arrear as contended by the defendant. The defendant's behaviour and the bailiff's action in this case cannot escape

the court's strongest condemnation. The illegal manner in which the levy was carried out and what transpired subsequent to the seizure, culminating in the sale of the goods for some $180.00, showed a complete disregard for the rights of other persons. The bailiff told the court that the $180.00 did not even cover the expenses of the distress; I marvel at this. The plaintiff said he did not recover the goods taken, despite repeated requests made to the defendant.

I turn now to the question of damages. The plaintiff has claimed damages for illegal levy and seizure, trespass (which seems to be trespass to land), trespass to goods, detinue and conversion. It does not appear that there was a claim for trespass to the person and in my opinion, rightly so. It is, therefore, necessary for me to deal separately with the various claims, although the result in damages will be the same in some cases, because each will lead to a common solution.

Where a distress is illegal, the tenant is entitled normally to recover the full value of the goods which have been lost to him, without any deduction for rent, unless there are mitigating circumstances (see Attack v. Bramwell (1863) 3 B & S 520). Since in the case of an illegal distress, the defendant will have committed a trespass, an action for illegal distress is just an action of trespass based upon a distress and the damages, therefore, are the same as in the ordinary tort action. Indeed, the plaintiff could have sued in trespass to goods or generally, in trespass to land, and the damages in all cases would have been the same. Where there is a claim for trespass to goods, Hilbery, J. said in Interoven Stove Co. Ltd. v. Hibbard & Ors. 1 All E.R. 263 at 270:

> " .... though no actual damage results, the law gives a right to recover substantial damages even though there be no proof of actual loss. "

The evidence in the instant case does not support a claim in detinue and conversion. It has not been shown that the defendant at any time took physical possession of the goods;

that was done by the bailiff and eventually, it was the bailiff who sold the goods. In an action for conversion or detinue, it must be shown that the defendant always exercised some active assumption of control over the goods. Although I find that the defendant was present with the bailiff at the time of the illegal entry and illegal distress, and that he actually assisted in, sanctioned and ratified the illegality, the evidence does not support any further active participation by the defendant, after the goods had been seized and impounded by the bailiff, that would make him liable in conversion or detinue.

Where damages are awarded for loss in relation to goods, the normal measure is based on the market value of the goods at the time of the wrong. The effect upon this measure of damages of increases or decreases in the value between wrong and judgment must then be considered. The plaintiff is entitled to receive as damages such a sum of money as will place him in as good a position as he would have been in if his goods had not been seized. Difficulties arise in actions such as this where the goods were purchased sometime before the wrong. The plaintiff may be able to give in evidence the purchase price of each item, but the market value at the time of the loss or at the time of the hearing of the action is seldon given in evidence. This is quite easily understood. Plaintiffs do not usually obtain a valuation on the furniture in their homes after they have used it for some time, and they themselves may not be able to guess the market value. Learned counsel for the plaintiff, realising this, asked the court, in his closing speech, to make an abatement in the purchase price of the goods unlawfully seized, assuming, of course, that judgment was in his favour. The general rule is that a plaintiff claiming damages must prove his case, and to justify an award of substantial damages, he must satisfy the court both as to the fact of damage and as to its amount, but a failure to lead evidence which will provide adequate data for calculating that amount will justify only an award of nominal damages. However, where it is clear that some substantial loss has been sustained, this court will

do the best it can so as not to deprive a plaintiff from obtaining the true award of substantial damages to which he is entitled.

I accept the evidence of the plaintiff that the goods mentioned in the statement of claim were taken in execution; that they were all purchased within recent times, and at a total cost of $5,100.00; that they were in good condition prior to the seizure of them. It is common ground that the goods were damaged, and as the bailiff said, in his evidence, those that he removed were damaged badly. The plaintiff's case is that he and his wife went to 6, Cassville Avenue, and they saw the badly damaged goods, but they did not see anyone there who could deliver up the goods. The bailiff said that one Mrs. Muschette was on the premises and she had authority to collect money and deliver goods; there is no evidence that the plaintiff had been so informed. The bailiff admitted that 6, Cassville Avenue was used by him only as an "alternate warehouse," the other being at Alton Villa Road where he also had his office. He further admitted that he did not see the plaintiff again after the 13th February, 1979, and that the goods were sold. I do not accept his evidence that he left an inventory of the goods he had taken. The plaintiff had no way of knowing where to find the bailiff.

In my judgment, I find that not only were the goods badly damaged, but that the plaintiff was not given a real opportunity to redeem them, consequently, they were lost to him. The question of whether there was a duty imposed on the plaintiff to take all reasonable steps to mitigate the loss, consequent on the illegal seizure of his goods, was not canvassed at the hearing of the action. The defendant did not attempt to show that the plaintiff ought reasonably to have taken certain mitigating steps and so the n normal measure of damages will apply (see Garnac Grain Co. v. Faure & Fairclough /1968/ A.C. 1130 at 1140.)

Applying the general principles to this case, and having regard to the common usage in the commercial community and what seems to be reasonable in the circumstances, I assess the

depreciation in value of the various items to be 15% of the purchase price. It follows, therefore, that the market value of the goods, that is to say, the retail price which the plaintiff would have to pay in February, 1978, on a purchase of goods of a similar nature and of the same age and condition to those illegally seized, would be $4,335.00. I will not allow the plaintiff's claim for $200.00 loss of use, as there is no evidence to support such a loss. I do not accept the evidence that $200.00 was stored under the cushion of the settee at the time the goods were taken. It appears to me that if the amount was in the house at all, then the plaintiff would have tendered the rent to the landlord or his bailiff, prior to the levy. The plaintiff's claim for this amount, therefore, fails. The plaintiff did not seek to show any market increase in value of the goods between the wrong and the trial date, and so there is no basis on which I could find that there was a consequential loss which should be added to the damages. Consequently, I consider the sum of $4,335.00 to be "the pecuniary sum which will make good to the sufferer, so far as money can do so, the loss which he has suffered as the natural result of the wrong done to him" (per Lord Dunedin in Admiralty Commissioners v. S. S. Valeria [1922] 2 A.C. 242 at p. 248).

The judgment of the court is that there be judgment for the plaintiff for $4,335.00, with costs to be agreed or taxed.