

HARNWELL *v.* HOLLENBERG MUSIC COMPANY.

Opinion delivered October 1, 1928.

COURTS—JURISDICTION OF MUNICIPAL COURTS.—A finding of the trial court that a piano sought to be replevied was of less value than \$300, and that the action was therefore within the jurisdiction of the municipal court, under Acts 1921, c. 463, § 2, *held* contrary to the evidence.

Appeal from Pulaski Circuit Court, Third Division; *Marvin Harris*, Judge; reversed.

STATEMENT BY THE COURT.

This suit in replevin was first brought in the municipal court of the city of Little Rock against C. P. Harnwell and Mrs. Mary Bryan to recover the possession of a Kimball piano, mortgaged by C. P. Harnwell and appellant, his wife, to appellees to secure the payment of an indebtedness of \$400. The balance claimed to be due was \$233.25. The defendants answered on October 19, 1926, disclaiming any interest in the piano, which it was alleged belonged to appellant, and also moved to dismiss the suit because of the court's lack of jurisdiction, the value of the piano being alleged to be \$400, and because no itemized verified account had been served on Harnwell before the bringing of the suit, and because of the insufficiency of the replevin bond.

Appellees then moved to make Mrs. L. B. Harnwell, appellant, who had also executed the mortgage as was alleged in the motion, a party to the suit, and, the motion being granted, had a verified copy of the account served upon appellant, and a summons. She appeared, and moved to dismiss, and, the motion being overruled, the cause was tried and judgment rendered against her, from

which she appealed to the circuit court. The motions to dismiss were again insisted upon in the circuit court, and overruled. A copy of the mortgage was introduced in evidence, and also the verified account furnished to appellant before the service of the summons upon her. The amount claimed to be due upon the indebtedness of C. P. Harnwell for security of which the mortgage was given, was not disputed, and from the testimony relative to the value of the piano, the court found it to be of the value of the amount sued for, \$233.25, and rendered judgment accordingly, from which this appeal is prosecuted.

C. P. Harnwell, for appellant.

Frank B. Pittard, Kenneth W. Coulter and John H. Quidor, for appellee.

KIRBY, J., (after stating the facts). This court on a motion for rehearing has concluded it should be sustained, and appellant's contention that the trial court erred in refusing to quash the summons and to dismiss the cause as against her for want of jurisdiction upheld. The motion to make her a party was made upon the disclosure by the answer of C. P. Harnwell and Mary Bryan that the property belonged to her, and she was duly served with a summons, and no error was committed in not granting the motion on that account; but the value of the property replevied was shown by the undisputed testimony to be in excess of \$300, and therefore beyond the jurisdiction of the municipal court. The circuit court acquired no jurisdiction on appeal, and the motion to dismiss should have been sustained. Act 463, Acts of 1921, § 2; *Ware v. Shoemaker-Bale Auto Co.*, 177 Ark. 227, 6 S. W. (2d) 285.

Harnwell testified the value of the piano was something between \$800 and \$1,000 and Hollenberg "thought his company should sell it for \$400, possibly \$450." Said "he would be willing to sell it for \$350 rather than to refuse an offer—that if it wasn't worth more than \$200 he would be willing to take it as a cancellation of the debt." His statement that he would be willing to take it in satis-

faction of the debt to his company was without probative force as against his statement, and the other testimony about the value of the piano is not in conflict therewith or contradictory thereof, since he had no interest in it beyond the amount of his debt, a sum less than \$300, secured by the mortgage thereon. There is no substantial evidence to support the court's finding that the value of the property replevied was under \$300 and within the court's jurisdiction, and the court erred in so holding.

Having reached this conclusion, the other questions need not be discussed, and the motion for rehearing will be granted, the judgment reversed, and the cause remanded, with directions to dismiss for want of jurisdiction. It is so ordered.

HART, C. J., and MCHANEY, J., dissent.
