1919
*Feb. 13, 14.
*Mar. 17.

GRAND TRUNK PACIFIC RAILWAY COMPANY AND BITHULITIC AND CONTRACTING LIMITED (PLAINTIFFS)..... APPELLANTS.

AND

JOHN DEARBORN (DEFENDANT)..... RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Statute—Construction—Chattel mortgage—Ordinary creditor—Execution creditor—Goods under seizure but not sold—Priority between mortgagee and creditor—The Bills of Sales Ordinance, s. 17 (N.W.T. Cons. Ord. c. 43).

The mortgagee, under a chattel mortgage given by E., failed to renew its registration within the delay mentioned in section 17 of the Bills of Sales Ordinance (N.W.T. Cons. Ord. c. 43). The mortgage, therefore, as provided in that section, "ceased to be valid as against the creditors" of E. G. obtained judgment against E. and caused a writ of execution to be placed in the sheriff's hands against his goods. A month before, a distress warrant was placed by the mortgagee in the hands of the same sheriff with instructions to take possession of and sell the goods covered by the mortgage. Pursuant thereto, the sheriff's officer, after taking an inventory of the goods, left them on the premises in charge of the tenant.

Held, Idington and Anglin JJ. dissenting, that the word "creditors," as used in section 17 of the Bills of Sales Ordinance, means all creditors of the mortgagor and not merely the execution creditors. *Parkes* v. *St. George* (10 Ont. App. R. 496) and *Security Trust Co.* v. *Stewart* (12 Alta. L.R. 420; 39 D.L.R. 518; [1918] 1 W.W.R. 709) overruled.

Per Davies C.J., Anglin and Mignault JJ.—The goods, being only under seizure and not yet sold when the writ of execution was placed in the hands of the sheriff, were still held under a mortgage which had become invalid as against the execution creditor; and the latter acquired a right to have the goods seized and disposed of for his benefit in priority to that of the mortgagee.

APPEAL *per saltum* from the judgment of the Supreme Court of Alberta, Ives J. dismissing the plaintiff's action with costs.

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*PRESENT:—Sir Louis Davies C.J. and Idington, Anglin, Brodeur and Mignault.

1919

GRAND TRUNK PACIFIC RWAY CO. AND BITHULITIC AND CONTRACTING LIMITED *v.* DEARBORN.

The Chief Justice.

The material facts of the case and the questions in issue are fully stated in the above head-note and in the judgments now reported.

H. C. Macdonald for the appellant.

S. B. Woods K.C. for the respondent.

THE CHIEF JUSTICE.—This appeal comes to us by way of appeal *per saltum* from a judgment of Mr. Justice Ives delivered on the trial of an interpleader issue in which the Grand Trunk Pacific Railway Co. was directed to be the plaintiff and the respondent Dearborn defendant for the purpose of testing the validity of a chattel mortgage given on the 29th day of January, 1914, by the Edmonton Gravel Co. Ltd. in favour of the Northern Trust Co., of which chattel mortgage the respondent Dearborn had become assignee.

On the 16th day of April, 1917, the Grand Trunk Pacific Railway Co. obtained judgment against the Edmonton Gravel Co. in the sum of $7,808 and costs, and on the 4th of May, 1917, a writ of *fi.-fa.* for the amount of the judgment and costs was placed in the sheriff's hands with instructions to levy the amount thereof on the goods and chattels of the Edmonton Gravel Co.

On the 5th of April, 1917, a distress warrant was placed in the hands of the sheriff by the defendant Dearborn as assignee of the mortgage bill of sale from the Edmonton Gravel Co. with instructions to take possession of and sell the goods and chattels set out and assigned in the said mortgage and pursuant thereto the sheriff did actually seize and take possession of the said chattels. A portion of them were actually sold by the sheriff and the remainder held by him

subject to the order of the court on the interpleader issue.

The learned trial judge held that the facts did not constitute a delivery of possession by the mortgagor, and also held that while he agreed personally with the contention of the plaintiff and the dissenting judgment of Chief Justice Harvey in the case of *The Security Trust Co. Ltd.* v. *Stewart* (1), that failure on the part of the mortgagee of the bill of sale or its assignee to file the renewal statement required by the statute

made void the mortgage against all creditors and that there was no sufficient justification for qualifying the term "creditors"

in section 17 of the Ordinance respecting the registration of Bills of Sale so as to read "execution creditors," he was nevertheless bound by the judgment of the court in that case and precluded from giving effect to his own opinion.

In this appeal the question is squarely raised before this court, which is, of course, not bound by any provincial judgments, whether under the Bills of Sales Ordinance, ch. 43 of the Consolidated Ordinances of the N.W. Territories, the defendant's mortgage, not having been renewed on or before the 18th of January, 1917, as required by section 17 of the Ordinance, had in the words of the Ordinance "ceased to be valid" as expressed in section 6 or had become "absolutely null and void" as expressed in section 11 against the creditors of the mortgagor, and whether the courts should limit the meaning of the term "creditors" in the section to execution creditors only.

The Ordinance in question is substantially a copy of the Ontario statute upon the same subject before it was amended by enacting that the word "creditors"

(1) 12 Alta. L.R. 420; 39 D.L.R. 518; [1918] 1 W.W.R. 709.

1919

GRAND TRUNK PACIFIC RWAY. CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

The Chief Justice.

should not be limited to "execution creditors" as it had been by the judgments of the courts of Ontario.

Upon this question, as to the meaning of the word "creditors" in the section as originally enacted by the Ontario Legislature and substantially copied by the Ordinance of the N.W. Territories, there has been a great difference of judicial opinion.

In *Holmes* v. *Vancamp* (1), Ch. J. Robinson, delivering the judgment of the court, says at p. 515:—

It is established clearly that he (Vancamp) was in fact a creditor (of the mortgagor) when this mortgage was given, and when he shews that, he compels us to hold the mortgage void as against him from the first and not merely from the time his judgment was entered.

In a case in the Chancery Division of *Barker* v. *Leeson* (2), it was held by Chancellor Boyd that

a chattel mortgage which has expired by effluxion of time under R.S.O. ch. 119, sec. 10, and has not been renewed or refiled, ceases to be valid as against all creditors of the mortgagor then existing.

The Chancellor, in giving judgment, said at p. 117:—

The language of the statute is, that every mortgage shall cease to be valid as against *the creditors* of the person making the same after the expiration of one year from the filing thereof, unless there be a statement of renewal filed, as provided in the 10th section of the Act: R.S.O. ch. 119. Why should this be read as meaning judgment or execution creditors?

The recovery of judgment merely facilitates the proof of the party who is the creditor, but he is as much a creditor before as after judgment. The object of the Act is plainly, by means of registration, to inform everybody that goods apparently in the possession and ownership of A. are not in truth his, but are held by him subject to the claim of B. under a chattel mortgage or bill of sale. The object of the Act is to enforce a visible and actual transfer of possession upon every change of ownership, or to compel the recording of the instruments which manifest the change of property. The intent is, that persons who are about to become the creditors of others by parting with money or money's worth, may, by searches in the public office, obtain information for their guidance; and that the ostensible owners of chattels may not gain fictitious credit on the faith of property which is either encumbered or belongs to other people. By the statute then, where the mortgagee has not renewed his security by refiling at the year's end, and is not in possession of the chattels, his mortgage ceases to be valid against creditors.

(1) 10 U.C.Q.B. 510.

(2) 1 O.R. 114.

The case chiefly relied upon by the respondent was that of *Parkes* v. *St. George* (1). There the appeal court held (Patterson J. dissenting) that a creditor who is not in a position to seize or levy on an execution on the property cannot maintain an action to have the instrument declared "invalid," and that holding was, of course, followed in the Ontario courts in a series of decisions until the Act was amended eight years afterwards by declaring that the word "creditors" in the statute should not be limited to execution creditors.

In the Province of Alberta, in the case of the *Security Trust Company Ltd.* v. *Stewart* (2), the court, Harvey C.J. dissenting, followed the Ontario decision of *Parkes* v. *St. George* (1), and limited the word "creditors" in the Act to

> such as were either execution or attaching creditors.

I agree fully with the dissenting Chief Justice Harvey in his statement (2), that he could see

> no sufficient reason for concluding that when the legislature said that a mortgage would cease to be valid as against the creditors of the mortgagor, it meant anything different from what it said. To prefix the word "execution" before the word "creditors" would be a perfectly legitimate amendment but it is only the legislature that has the right to make such amendment.

See also judgment of Walsh J. in *Graf* v. *Lingerell* (3).

The same question came before this court in the case of *Clarkson* v. *McMaster* (4). Chief Justice Strong, in his judgment, referring to the decision of the Ontario Court of Appeal in *Parkes* v. *St. George*, above referred to (1), and the cases which followed it, said at p. 100:—

> If it were necessary now to determine whether this construction was or was not correct I am compelled to say, with great respect for the opinions referred to, that I should find great difficulty in agreeing with

(1) 10 Ont. App. R. 496.
(2) 12 Alta. L.R. 420; 39 D.L.R. 518; [1918] 1 W.W.R. 709.
(3) 7 Alta. L.R. 340, at p. 342. 16 D.L.R. 417
(4) 25 Can. S.C.R. 96.

1919

GRAND TRUNK PACIFIC RWAY. CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

The Chief Justice.

these decisions. First, I see no reason why the words creditors should be restricted to a particular class of creditors, viz., judgment creditors. Why should the same word receive a different construction in this Act from that which it has received as used in the statute of the 13th Elizabeth? I see no reason for any such distinction. It is true that equitable execution as consequential on the avoidance of a transaction under the 13th Elizabeth could not, under the old system of separate jurisdictions for law and equity, have been obtained by any but judgment creditors, but the deed was nevertheless held to be void as against simple contract creditors.

And again at p. 101:—

Then, there are reasons which, in my opinion, require a liberal construction of the word "creditors," derived from the manifest policy of the "Chattel Mortgage Act." Registration or possession were required manifestly for the protection, not only of actual creditors, but of those who might become creditors, relying on the visible possession of property by their debtor, and the absence from the appropriate registry of any charge upon that property; and this for the protection of those who had not had the opportunity of recovering judgment, creditors payment of whose claims might be deferred, or who had not had time to get judgment.

I have no hesitation myself in putting the construction upon the section of the Ontario Legislature, from which the Ordinance was substantially copied, adopted by Chief Justice Robinson in *Holmes* v. *Vancamp* (1), Chancellor Boyd in *Barker* v. *Leeson* (2), and Patterson J. in *Parkes* v. *St. George* (3), and also by Chief Justice Strong in *Clarkson* v. *McMaster* (4), and, upon the N.W. Ordinance which is a substantial copy of the Ontario enactment, by Chief Justice Harvey, dissenting in the Appeal Court and Simonds J., the trial judge, in *Security Trust Company* v. *Stewart* (5), and by Walsh J. in *Graf* v. *Lingerell* (6), on the N.W. Ordinance before us.

I cannot admit the right of the courts where the language of a statute is plain and unambiguous to practically amend such statute either by eliminating

(1) 10 U.C.Q.B. 510.
(2) 1 O.R. 114.
(3) 10 Ont. App. R. 496.
(4) 25 Can. S.C.R. 96.
(5) 12 Alta. L.R. 420; 39 D.L.R. 518; [1918] 1 W.W.R. 709.
(6) 7 Alta L.R. 340, at p. 342, 16 D.L.R. 417.

words or inserting limiting words unless the grammatical and ordinary sense of the words as enacted leads to some absurdity or some repugnance or inconsistency with the rest of the enactment, and in those cases only to the extent of avoiding that absurdity, repugnance and inconsistency.

I think the word "creditors" as used in this Ordinance means just what it says and embraces all creditors and not merely execution creditors. Such a construction has in scores of cases in the English and in our courts been put upon the same word "creditors" in the Statute of Elizabeth.

I think the object and purpose of the legislation being construed was to compel either registration of a mortgage or other bill of sale from the owner in possession of the chattels to a mortgagee or the visible and actual transfer and possession of the chattels to him so that persons might not be entrapped or misled into advancing moneys or credits to others in ostensible possession of chattels and goods under the belief that they were the owners of the goods. It was intended to prevent the ostensible owner of goods from obtaining undeserved credit on the faith of his being the real owner of property which was either encumbered by secret bills of sale or belonged to other people. It does not require an actual change in the ostensible possession of property but it does require, if there is no such change of possession, that the security taken upon the property should be recorded in a public office; and it further requires that from time to time, as specified in the Act, such security should be renewed on the registry so as to conform with the actual existing facts. These requirements were not enacted surely for the benefit of execution creditors merely. They were so enacted for the benefit and protection of all who were

1919

GRAND TRUNK PACIFIC RWAY. CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

The Chief Justice.

or might become creditors before there was an open, visible change of actual possession of the goods and chattels or a registration in a public office of a mortgage of such goods. It comes down to this, that either registration and renewal or actual transfer of possession were required for the protection as well of existing as for future creditors who might rely upon such possession and the non-registration or non-renewal of charges in the proper registry.

Being a remedial statute to prevent fraud and protect honest dealers it should rather be construed, if its language is doubtful, liberally and to advance the object the legislature clearly had in view.

For these and other reasons I will not stop to enlarge upon, I would allow the appeal and direct judgment as prayed for in the statement of claim.

If a majority of the court does not agree with my construction I would still allow the appeal upon the second ground that the plaintiffs appellants having become execution creditors, and the goods not having been sold when the execution was placed in the hands of the sheriff, they were still held under the mortgage which had become invalid as against the plaintiffs as execution creditors and that as such these latter had priority over the claimant under the void chattel mortgage.

IDINGTON J. (dissenting).—I agree with the construction adopted herein by the court below, of the Bills of Sale Ordinance Act in question. Even if I had grave doubts (which I never had) of the correctness of that construction having been well founded, when adopted long ago by the courts of Ontario in applying the Act from which that now in question seems to have been copied, I should not feel at liberty at this late day

to upset all that which now rests upon the adoption of such construction, supposed to have been settled so long ago.

There have been many interesting questions suggested in the course of the argument which, when connected with charges of fraud, might be well worth considering, but raises nothing herein when such charges are not made. Therefore I pass no opinion but upon the single point raised and dealt with above.

I think the appeal should be dismissed with costs.

ANGLIN J.—The defendant having failed to renew the registration of his chattel mortgage on or before the 18th January, 1917, as required by section 17 of the Bills of Sales Ordinance (Con. Ord. N.W.T., ch. 43), it "ceased to be valid as against the creditors" of the mortgagor. The plaintiff, the Grand Trunk Pacific Railway Co., was then a simple contract creditor of the mortgagor. It became an execution creditor on the 4th of May, 1917. Meantime, on the 5th of April, the defendant had caused what he asserts was a seizure to be made of the goods covered by his chattel mortgage and they were, formally at least, still under such seizure when the plaintiff company's execution was lodged with the sheriff on the 4th of May and when he was directed, on the 19th of October, to hold the chattels or proceeds of the sale thereof to meet it.

Upon these facts, Ives J. following, as he was bound to do, the decision of the Appellate Division of the Supreme Court of Alberta in *Security Trusts Co. Ltd.* v. *Stewart* (1), (although he expressed his personal preference for the dissenting opinion of Harvey C.J.), dismissed the plaintiffs' claim to have the chattel mortgage declared void as against them and for pay-

(1) 12 Alta. L.R. 420; 39 D.L.R. 518; [1918] 1 W.W.R. 709.

1919

GRAND TRUNK PACIFIC RWAY CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

Anglin J.

ment over to them of the proceeds of the sale of the goods in question (made without prejudice under an arrangement with the parties) by the sheriff in whose hands they are. From that judgment the plaintiffs appeal to this court—*per saltum* by consent.

The appeal rests on two distinct grounds: (1) that the word "creditors," in section 17 of the Bills of Sales Ordinance, means all or any creditors of the mortgagor and not merely "execution creditors," as was held by the Appellate Division in the *Stewart Case* (1); (2) that the goods being only under seizure and not yet sold when the first execution was placed in the sheriff's hands, they were still held under the mortgage, which had become invalid as against the plaintiffs, if not before, at least immediately upon their attaining the status of execution creditors, and that as execution creditors they acquired a right to have the goods in question seized and disposed of for their benefit superior to that of the defendant as chattel mortgagee.

On the first point, notwithstanding Mr. Macdonald's very able argument and the powerful judgment of the late Chief Justice Strong in *Clarkson* v. *McMaster* (2), by which he supported it, I am of the opinion that the word "creditors" in the Bills of Sales Ordinance has been properly held to mean execution creditors—creditors whose claims are in such a form as gives them a lien on the property and entitles them to seize it—creditors having rights in respect of the goods to the exercise of which the security to be avoided would, if valid, present an obstacle. The judgments in *Parkes* v. *St. George* (3), have convinced me that the legislature cannot have meant to give a simple contract creditor what would be tantamount to execution before

(1) 12 Alta. L.R. 420; 39 D.L.R. 518; [1918] 1 W.W.R. 709.

(2) 25 Can. S.C.R. 96.

(3) 10 Ont. App. R. 496.

judgment. It would be useless at the suit of such a creditor to set aside a mortgage which (subject to the statute against fraudulent preferences) could be at once replaced (no creditor having acquired a right to seize the goods covered by it and no subsequent purchaser or mortgagee having intervened) unless such goods should be held to meet the suitor's claim when he should have recovered judgment against his debtor. On this branch of the case, however, I merely desire respectfully to express my concurrence in the judgment in *Parkes* v. *St. George* (1), and the numerous decisions which have followed it.

But upon the other aspect of the case, I think the appellants are entitled to succeed on the ground on which *Heaton* v. *Flood* (2), was decided in favour of the execution creditor. I express no decided opinion upon the question whether there must be what is tantamount to "a delivery or new transfer by the mortgagor" to render the taking of possession effectual to cure the defect in the mortgagee's title due to non-compliance with the requirements of the statute. The mortgagee certainly took such possession as he obtained by virtue of his mortgage upon a suggestion that a seizure by him under it would "cure the defect" due to its non-renewal. He continued to hold solely under whatever right the defective mortgage gave him—a right good as against the mortgagor but which had "ceased to be valid" as against his execution creditors. There had been no sale of the goods such as was held in *Meriden Co.* v. *Braden* (3), and *Cookson* v. *Swire* (4), to vest in the purchaser a title not dependent on the continued subsistence of the chattel mortgage and good as against the subsequent execution creditor. There

(1) 10 Ont. App. R. 496.
(2) 29 O.R. 87.
(3) 21 Ont. App. R. 352.
(4) 9 App. Cas. 653.

1919

GRAND TRUNK PACIFIC RWAY CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

Anglin J.

was nothing which amounted, or was equivalent, to a delivery or new transfer by the mortgagor—nothing which took the transaction out of the Bills of Sale Ordinance (*Smith* v. *Fair* (1)), *per* Patterson J.A., if an act of the mortgagor tantamount to delivery was requisite. The view that "the remedial effect of possession depends upon the act of the mortgagor" was taken at an early date in a case arising under the Bills of Sale Ordinance now under consideration by Wetmore J., *Adams* v. *Hutchings* (2).

But whether this view be or be not correct the evidence, in my opinion, to quote the language of Meredith C.J. in *Heaton* v. *Flood*, (3) does not

> establish any change of possession, or anything more than a mere formal delivery

to the sheriff's officer as the mortgagee's bailiff,

> without any real change of the possession being intended or effected.

The apparent possession continued as before. The goods covered by the chattel mortgage were found by the sheriff's officer lying in or about a barn on a tenanted farm. After taking an inventory the officer left them on the place just as he found them in charge of the tenant, without pay, merely with instructions to "see that nobody took the stuff." In my opinion, even in the absence of a statutory provision expressly prescribing that the change of possession be open and reasonably sufficient to afford public notice thereof (*Hogaboom* v. *Graydon* (4)), what took place did not constitute the "actual and continued change of possession" requisite to dispense with a mortgage duly registered in conformity with the Bills of Sales Ordinance, and only such possession would enable the mortgagee to hold as against execution creditors of the

(1) 11 Ont. App. R. 755, at p. 758.
(2) 3 Terr. L.R. 206, at p 216.
(3) 29 O.R. 87.
(4) 26 O.R. 298, at p. 302.

mortgagor. *Scribner* v. *Kinlock* (1), *per* Patterson J.A. at p. 378 and per Rose J. at p. 380. *Heaton* v. *Flood* (2); *Steele* v. *Benham* (3). To hold otherwise would open the door to the very mischief against which the statute was designed to guard.

I would allow the appeal of the execution creditors and direct judgment in their favour in accordance with the prayer of the statement of claim.

BRODEUR J.—The main question in this case is as to whether a chattel mortgage which has not been renewed is good against ordinary creditors of the mortgagor. The section we have to construe is section 17 of the Bills of Sales Ordinance, ch. 43, which enacted that every chattel mortgage has to be renewed within two years of the filing, under penalty that in default the mortgage

shall cease to be valid as against the creditors of the persons making the same and against subsequent purchasers or mortgagees in good faith for valuable consideration.

That section has been the law of the North West Territories since 1881. That legislation had evidently been adopted from the legislation then in force in Ontario because the Ordinance of 1881 copies almost word for word the statute which was then in force in Ontario.

It is contended by the respondent that the word *creditors* in that section means the execution creditors. The appellant, on the other hand, contends that the word *creditors* should be construed literally as applying to all the creditors, including the ordinary creditors.

We find in the Statute 13 Elizabeth that the name *creditors* is there mentioned in connection with the right to set aside fraudulent or preferential assignment.

(1) 12 Ont. App. R. 367. (2) 29 O.R. 87, at p. 92.
(3) 84 N.Y. 634, at p. 638.

1919

GRAND TRUNK PACIFIC RWAY. CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

Brodeur J.

That word was construed in different cases in England, which are to be found in May on Fraudulent Conveyances, 3rd ed., p. 102; and I may in that respect quote the case of *Reese River Silver Mining Co.* v. *Atwell* (1), where it was held by Lord Romilly M.R. that simple contract creditors are entitled to a decree declaring a deed void under the Statute of Elizabeth, though not having obtained the judgment at law.

In 1881, in Ontario, in the same year in which the Ordinance was passed in the North West Territories, Chancellor Boyd, in the case of *Barker* v. *Leeson* (2), being called upon to construe exactly the same section as the one passed in the North West Territories decided that the word *creditors* in that section could not be restricted to execution creditors but should apply to all creditors.

Then the Council of the North West Territories, in passing that legislation and in adopting the word *creditors*, is supposed to have used the word according to the construction which it had received in England and was receiving in the Province of Ontario.

Three years later, in Ontario, was decided the case of *Parkes* v. *St. George* (3) where the Court of Appeal held that a creditor, who is not in a position to seize or lay an execution on a property cannot maintain an action to have the chattel mortgage declared invalid.

That decision of the Court of Appeal of Ontario seems to have been followed in that province until 1892, when the law was changed.

In 1895, the question came up before this court in the case of *Clarkson* v. *McMaster* (4), and there the Chief Justice, Sir Henry Strong, said that he

(1) L.R. 7 Eq. 347.
(2) 1 O.R. 114.
(3) 10 Ont. App. R. 496.
(4) 25 Can. S.C.R. 96.

could not agree with the opinions expressed in the case of *Parkes* v. *St. George* (1). I will quote his words:—

> I see no reason why the word *creditors* should be restricted to a particular class of creditors, viz., judgment creditors.

And he goes on:—

> Registration or possession are required manifestly for the protection not only of actual creditors but of those who might become creditors relying on the visible possession of property by their debtor and the absence from the appropriate registry of any charge upon that property.

In the Province of Alberta from which the present appeal comes there seems to have been a great divergence of opinion among the judges of that province. It seems to me that the case of *Parkes* v. *St. George* (1), has been decided on account of the peculiar expressions used in the English "Bills of Sale Act," which speaks of execution creditors. Chief Justice Hagarty, in rendering the judgment in the case of *Parkes* v. *St. George* (1), says:—

> It is significant that with the extreme care manifested in these Acts (the English "Bills of Sales Acts") to avoid secret or fraudulent assignments of chattels, they should have carefully limited their operation to creditors having executions. I cannot believe our legislature ever contemplated applying the remedy of registration to the case of every person having a claim or account against the mortgagor at the date of the instrument.

It is pretty clear that the Ontario "Bills of Sales Act" was taken from the English Act. But if the Ontario Legislature has found it advisable to use the word *creditor* as it was used in the Statute of Elizabeth, it seems to me that the change was made intentionally on the part of the legislature and that it meant to give to the creditors the same rights as they had under the Statute of Elizabeth.

The Court of Appeal of Alberta came to the conclusion that they should follow the decision of *Parkes* v. *St. George* (1). With a great deal of deference I

(1) 10 Ont. App. R. 496.

1919

GRAND TRUNK PACIFIC RWAY. CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

Mignault J.

hold the contrary view. It seems to me that the word *creditors* should be construed as applying to all creditors.

The appeal, then, should be allowed with costs of this court and of the courts below.

MIGNAULT J.—Two questions are submitted by the appellant:—

1. By virtue of section 17 of the Bills of Sales Ordinance, being ch. 43 of the Consolidated Ordinances of the North West Territories, the respondent having failed to file a renewal statement within thirty days next preceding the 18th of January, 1917, its chattel mortgage ceased to be valid as against the creditors of the mortgagor and the appellant was such a creditor.

2. This failure to file a renewal statement has not been cured by the seizure made by the respondent on the 5th April, 1917, of the goods covered by the chattel mortgage, which was not such a taking possession of the mortgaged goods as could cure the omission to file the statutory renewal.

First question.—The answer to this question depends on the construction of the word "creditors" in sections 11, 17 and 19 of the Ordinance, the appellant contending that it means creditors generally, the respondent claiming that it only applies to execution creditors, to the exclusion of mere contract creditors.

In this case the appellant became an execution creditor only on the 4th May, 1917, subsequent to the seizure made by the respondent on the 5th April.

As briefly as they can be stated, the provisions of the Bills of Sales Ordinance, with regard to the registration and renewal of registration of chattel mortgages, are as follows:—

Section 6 requires the registration, within thirty days from its execution, of every mortgage or conveyance

of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged.

By section 11 it is provided that if such mortgage or conveyance is not so registered, it shall be

absolutely null and void as against creditors of the mortgagor and against subsequent purchasers or mortgagees in good faith for valuable consideration.

Section 17 states that

every mortgage filed in pursuance of this Ordinance shall cease to be valid as against the creditors of the persons making the same and against subsequent purchasers or mortgagees in good faith for valuable consideration after the expiration of two years from the filing thereof unless, within thirty days next preceding the expiration of the said term of two years, a statement exhibiting the interest of the mortgagee, his executors, administrators or assigns in the property claimed by virtue thereof and a full statement of the amount still due for principal and interest thereon, and of all payments made on account thereof, is filed in the office of the registration clerk of the district where the property is then situate * * *

Finally section 19 directs that another statement in accordance with the provisions of section 17 shall be filed in the office of the registration clerk of the district where the property is then situate within thirty days next preceding the expiration of the term of one year from the day of the filing of the statement required by section 17,

and in default thereof such mortgage shall cease to be valid as against the creditors of the person making the same and as against purchasers and mortgagees in good faith for valuable consideration, and so on from year to year, that is to say, another statement as aforesaid duly verified shall be filed within thirty days next preceding the expiration of one year from the filing of the former statement, and in default thereof such mortgage shall cease to be valid as aforesaid.

This Ordinance was adopted in 1881, and was substantially copied from the Ontario Act, R.S.O. 1877, ch. 119, which also stated (section 4) that chattel mortgages not registered would be

absolutely null and void as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith for valuable consideration.

1919

GRAND TRUNK PACIFIC RWAY. CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

Mignault J.

Section 11 of the Ontario Act provided that

every mortgage, or a copy thereof, filed in pursuance of this Act, shall cease to be valid as against the creditors of the persons making the same and against subsequent purchasers and mortgagees in good faith for valuable consideration, after the expiration of one year from the filing thereof,

unless within thirty days next preceding the expiration of the said term of one year a statement exhibiting the interest of the mortgagee is again filed in the office of the clerk of the County Court.

The English "Bills of Sale Act," 1878, 41-42 Vict. ch. 31, also required the registration of bills of sale, failing which

such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs, officers or other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void as regards the property in or right to the possession of any chattels comprised in such bill of sale.

It is perfectly clear that decisions under the English "Bills of Sale Act" cannot be taken as a guide for the construction of the Canadian statutes. In drafting the latter statutes the legislature has departed from the carefully guarded language of the English Act, and that, it seems to me, cannot have been done with any other idea than of giving to the Canadian statutes a wider application than the English Act.

In *Parkes* v. *St. George* (1), decided in 1884, the Ontario Court of Appeal, Hagarty C.J., Burton, Patterson and Osler JJ. held, Patterson J. dissenting, that a judgment or execution creditor is entitled to impeach a chattel mortgage on the ground of an irregularity or informality in the execution of the

(1) 10 Ont. App. R. 496.

document, or by reason of its non-compliance with the provisions of the "Chattel Mortgage Act" (R.S.O. ch. 119), but that a creditor who is not in a position to seize or lay on an execution on the property, cannot maintain an action to have the instrument declared invalid, and that a creditor in that position can only maintain such a proceeding where the security is impeached on the ground of fraud.

In 1892, the Ontario Act respecting mortgages and sales of personal property was amended by 55 Vict. ch. 26, and it was enacted (section 2) that in the application of the said Act the words,

> void as against creditors shall extend to simple contract creditors of the mortgagor or bargainor suing on behalf of themselves and other creditors * * * as well as to creditors having executions against the goods and chattels of the mortgagor or bargainor in the hands of the sheriff or other officer.

Referring now more specially to *Parkes* v. *St. George* (1), which was followed by the Alberta Court of Appeal in the *Security Trust Co.* v. *Stewart* (2), Chief Justice Harvey dissenting, doubts as to its correctness where expressed by so eminent a jurist as Chief Justice Sir Henry Strong in *Clarkson* v. *McMaster* (3). Before *Parkes* v. *St. George* (1) Chief Justice Sir John Beverley Robinson, dealing with the statute then in force, had expressed a contrary opinion in *Holmes* v. *Vancamp* (4), and Chancellor Boyd in *Barker* v. *Leeson* (5), had decided that a chattel mortgage, registration of which had not been renewed, ceased to be valid as against all creditors of the mortgagor then existing.

Mr. Woods, for the respondent, referred us to the dictum of Lord Atkinson as to the construction of statutes in *Banbury* v. *Bank of Montreal* (6), where the noble Lord said, at p. 691:—

(1) 10 Ont. App. R. 496.
(2) 12 Alta. L.R. 420; 39 D.L.R. 518; [1918] 1 W.W.R. 709.
(3) 25 Can. S.C.R. 96.
(4) 10 U.C.Q.B. 510, at p. 515.
(5) 1 O.R. 114.
(6) [1918] A.C. 626; 44 D.L.R. 234.

1919

GRAND TRUNK PACIFIC RWAY CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

Mignault J.

The question then is, does this section (section 6) of Lord Tenterton's Act apply to innocent representation? No doubt the words of the section are general. On its face it applies to every representation, innocent or fraudulent; but one cannot construe these words, general in character though they be, without having regard to the circumstances in reference to which they were used, and to the object appearing from the statute which the legislature had in view in using them. Lord Coke, in a well-known passage in *Heydon's Case* (1), lays it down that to get at the scope and object of an Act one should consider: (1) What the law was before it was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy parliament has appointed; (4) the reason for the remedy. In *Hawkins* v. *Gathercole* (2), Turner L.J. said that "in construing Acts of Parliament the words which are used are not alone to be regarded." He then quotes with approval and adopts a passage from the judgment in *Stradling* v. *Morgan* (3). This statement of the law was by Turner L.J. stated to be the best he knew of. It has been approved of by Lord Hatherley in *Garnett* v. *Bradley* (4), by Lord Selborne in *Bradlaugh* v. *Clarke* (5), and by Lord Halsbury in *Eastman Photographic Materials Co.* v. *Comptroller-General of Patents, Designs and Trade Marks* (6). The passage from Plowden is so applicable to the present case and, approved of as it has been, is so authoritative that one may be excused for quoting it at length. It runs thus: "The judges of the law in all times past have so far pursued the intent of the makers of statutes that they have expounded Acts which were general in words to be but particular where the interest was particular," and after referring to several instances proceeds: "From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter, they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign (*i.e.*, extraneous) circumstances. So that they have ever been guided by the intent of the legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion."

There is no doubt that, apart from the authority due to this exposition of the law governing the con-

(1) [1584] 3 Rep. 7b.
(2) (1855) 6 DeG.M. & G. 1, 20-1.
(3) [1560] Plowd. 199, at pp. 204 and 205.
(4) 3 App. Cas. 944, at p. 950.
(5) 8 App. Cas. 354, at. p. 362.
(6) [1898] A.C. 571, at p. 575.

struction of statutes, the duty of courts is to have regard, in construing general terms,

> to the circumstances in reference to which they were used and to the object appearing from the statute which the legislature had in view in using them.

But I can discover in this Ordinance no indication that the intention of the legislature was not to use the words "creditors of the mortgagor" in their general sense. The statute provided for the establishment of registration districts and for the registration of mortgages and conveyances intending to operate as a mortgage of goods and chattels. The object of the statute was without doubt to secure the due publicity of these mortgages and conveyances, and this publicity was required for the protection of third parties dealing in good faith with a person in actual possession of goods and chattels, for registration was required in the case of

> every mortgage or conveyance intending to operate as a mortgage of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged.

When, therefore, the statute says that in default of registration or the filing of a statement of the interest of the mortgagee, the mortgage shall be absolutely null and void, or shall cease to be valid, as against the creditors of the mortgagor and subsequent purchasers or mortgagees in good faith for valuable security, I cannot think that the word "creditors" should be cut down by construction so as to read in the statute the qualification that these creditors must be judgment or execution creditors. The evil or mischief which the legislature unquestionably desired to remedy was the possibility of a debtor making secret conveyances or mortgages of his goods and chattels not accompanied by an immediate delivery and actual change of posses-

1919

GRAND TRUNK PACIFIC RWAY. CO. AND BITHULITIC AND CONTRACTING LIMITED v. DEARBORN.

Mignault J.

sion. That such secret conveyances or mortgages would be prejudicial to creditors generally, who have given credit to the mortgagor on the faith of his possession of ample goods and chattels, as well as to judgment or execution creditors who have obtained a lien on his goods, cannot be doubted, and the intention was to remedy this evil and to give to registration the same effect as an actual delivery and change of possession, both serving as a notice to third parties from whom the owner of the goods and chattels might seek to obtain credit or who might obtain a lien on his property.

I think that the Ontario statute passed in 1892, eight years after *Parkes* v. *St. George* (1) was decided, expressly declaring that the word "creditors" shall extend to simple contract creditors of the mortgagor or bargainor suing on behalf of themselves, as well as to creditors having executions against the goods and chattels of the mortgagor or bargainor, shews that at least in Ontario, where this legislation was first enacted, the intention was not that the word "creditors" should be restricted to execution creditors. And notwithstanding the great respect which I have for the decision in *Parkes* v. *St. George* (1), and the reluctance which I naturally feel to dispute its authority, I cannot, now that the question is raised before this court, do otherwise than express the opinion that the appellant, although a contract creditor, was such a creditor as was in the contemplation of the sections of the Ordinance above cited. For that reason, I think, with deference, that the decision of the Alberta Court of Appeal in *Security Trust Company Ltd.* v. *Stewart* (2), should be overruled.

(1) 10 Ont. App. R. 496.

(2) 12 Alta. L.R. 420; [1918] 1 W.W.R. 709; 39 D.L.R. 518.

I, therefore, have come to the conclusion on this first question that the respondent's chattel mortgage ceased to be valid as against the appellant, no renewal statement having been filed as required by the Ordinance.

Second question.—I here express my entire concurrence with what my brother Anglin has said on this branch of the case, and I am of the opinion that there was not, by means of the proceedings under the seizure made by the respondent on the 5th April, 1917, such a taking of possession of the mortgaged goods as would dispense with compliance with the requirements of the statute as to registration or renewal thereof.

The appeal should, therefore, be allowed with costs throughout, and judgment should be rendered in accordance with the appellants' demand.

Appeal allowed with costs.

Solicitors for the appellants: *Short, Cross, Maclean & Macdonald.*

Solicitors for the respondent: *Wood, Sherry, Collisson & Field.*