

DIVISIONAL COURT.

DECEMBER 26TH, 1911.

D'AVIGNON v. BOMERITO.

Assignments and Preferences—Chattel Mortgage Made by Insolvent—Security for Current Promissory Note and Moneys Advanced to Satisfy Execution—Assignment for Benefit of Creditors within Sixty Days after Chattel Mortgage Given—Action by Assignee—Onus—Assignments Act, sec. 5(4)—Preferential Payment—Account of Proceeds of Goods Sold.

Appeal by the defendant from the judgment of Boyd, C., ante 158.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and LATCHFORD, JJ.

J. F. Boland, for the defendant.

J. W. G. Winnett, for the plaintiff.

LATCHFORD, J.:—This appeal is from the judgment of his Lordship the Chancellor setting aside the chattel mortgage given to the defendant by his son on the 4th November, 1910. The son's assignment for the general benefit of his creditors was made on the 6th December, 1910, less than sixty days after the transaction attacked by the plaintiff. In the circumstances, 10 Edw. VII. ch. 64, sec. 5, creates the presumption that the chattel mortgage was made with intent to give the defendant an unjust preference over the other creditors of his insolvent son.

There was no evidence adduced sufficient, in the opinion of the learned Judge who heard it, to remove the onus which the statute casts upon the defendant. After a careful perusal of the evidence, I am satisfied that the facts might well have been found more strongly against the defendant. As found, however, the application to them of the provisions of the statute was, I think, quite properly made.

The appeal fails and should be dismissed with costs.

See *Stecher Lithographic Co. v. Ontario Seed Co.*, 22 O.L.R. 577, and 24 O.L.R. 503.

FALCONBRIDGE, C.J., and BRITTON, J., agreed that the appeal should be dismissed with costs.