Abbott showed cause.

Horton for the defendants

HAGARTY, C. J.—The material question between the parties, irrespective of that raised by the affidavits filed, is the same as that between *McInnes* v. *Haight*, in which I gave judgment in April term last.

I charged the jury the same in both as to the effect of the 4th section of Consolidated Stat. of Upper Canada, cap. 45, according to my construction of it; and the same objections were urged by the respective counsel for the defendants in both cases; and in this it was mutually agreed, after my charge to the jury, that, irrespective of the verdict, the question of law might be disposed of by the court in term

In the argument in term, however, in this case, the defendant's counsel took a ground, which I shall advert to in the next paragraph, that was not urged in the argument of the case.

I must give the same decision in this which I did in the other, and refuse a new trial, as I think the verdict for the plaintiff upon this point should stand undisturbed, and judgment be given for the plaintiff upon the points reserved.

My reasons for doing so are the following, viz.:—

1st. That I do not see any analogy between this statute and the 44th section of that for the Registry of the Titles to Land, (Con Statutes of U. C., cap. 89,) because there is nothing in the 44th section of the last named statute which leads one to suppose that *five* or any number of days are specified or given, within which to register a deed or conveyance to land, in order to hold a title against the claim of a subsequent purchaser or mortgagee. Were such words as "within five days" introduced after the words "unless a memorial thereof be registered," instead of the words "in manner hereby directed, &c.," there would no doubt be a complete analogy between the two sections of the respective statutes. I doubt much, however, if a subsequent purchaser or mortgagee's title would be considered good for much, or if he would not be at some hazard in taking a title to land until the lapse of the specified number of days within which the first purchaser might register.

2nd. In the case of a will under the 46th section of the statute for the registry of titles to land, it is sufficient to register the devise within 12 months after the death of the devisor, and a registry within that time is as valid as if it had been recorded immediately after the death Now between that section and the 4th section of the Chattel Mortgage Act there is, in my opinion some analogy because there is time given within which to register in both cases. The title under a will dates from the death of the devisor, by relation, and not from that of the registry An innocent purchaser of land from an heir whose executor devised the estate to another person, could, therefore, never be considered as holding a valid title against the devisee, under an unregistered will, within 12 months of the death of the testator, although the provisions and object of the Registration of Deeds Act is to secure registry of all titles, in order to spare and protect innocent and *bona fide* purchasers for value from loss of title being made to others under conveyance previously executed.

3rd. It was never necessary to register a conveyance of lands in Upper Canada in order to complete a title or make it a valid conveyance, in the same way as it is necessary in England to complete a title to land by enrolment. Nor is registration intended to supply the place of enrolment, but simply to guard against a subsequent purchaser of the same lands obtaining the lands by prior registry. (*See* 47th sec of stat of U. C., 4 Wm. IV., cap. 1; *Doe Stafford* v *Brown*, 3 O. S. 92; *Doe ex dem Adkins* v. *Atkinson*, 4 O S., 140,) and if no such registration in the case of lands be necessary to complete a title, I am at a loss to understand why it is so in the case of goods which may be conveyed by a simple writing not under seal.

4th. I think the right to these goods became absolute in the bargainee at the time of the execution of the bill of sale, subject of course to be held void and fraudulent, as against creditors and others, if the bargainee did not register within five days; and that having so registered, his title became effective by relation. In *Vaughan ex dem Atkins* v *Atkins*, 5 Bur 2787 the court are said to have expressed themselves thus:—"There is no rule better founded in law, reason and convenience than this, that all the several parts and ceremonies necessary to complete a conveyance shall be taken together as one act, and operate from the substantial part by relation" The substantial, *i. e.*, the part which affected the parties to the instrument in this case, and the claim to the goods under it, was all performed when the bill of sale was executed, and provisional upon its registry, it was good against all the world: the registry was to affect other parties, when registered according to law; all provisional considerations, and the claims of those other parties were shut out absolutely; if it had not been registered according to law the claims of those parties would prevail.

5th. My other reasons are set forth in my judgment in *McInnes* v. *Haight*, which is reported in the 7 U. C. L. J. 104, and to which I still adhere.

6th. With regard to the other questions, *i. e.*, that there was a general verdict whereby the jury found that there was an immediate delivery accompanying the sale, followed by a continual change of possession, which rendered the registry of the bill of sale unnecessary. I must say I was not quite satisfied with the verdict, because from the evidence of the sheriff and the clerk of the county court, the testimony of young McInnes was rendered somewhat questionable; but as there is quite substantial ground enough to sustain the verdict, irrespective of this, I think it should not be disturbed, although had the plaintiff's claim to the goods rested solely upon the immediate delivery accompanying their sale, followed by the necessary continual change of possession, so as to make a bill of sale unnecessary, I might, in the exercise of the discretion which I possess, have ordered a new trial upon payment of costs, because this case is distinguished from the cases of *Woodruff* v. *Campbell*, 5 O S. 305; and *Elmslie* v. *Wildman*, 8 Taunt. 236, whereon I grounded my refusal of a new trial in the county court case of *Cochrane* v. *Shepard*. The evidence of young McInnes being, as shewn by Mr. Horton's affidavit, contrary to expectation ('I do not think it was what is technically called a case of surprise;') but I do not deem it necessary to speak decisively upon how I might have disposed of this question under other circumstances, because the exercise of that discretion now would be manifestly unjust, when there are other substantial grounds to uphold the verdict.

I therefore order the verdict shall stand for the plaintiff; that defendants' rule be discharged; and judgment entered for the plaintiff upon the points reserved and the questions raised at the trial.

The foregoing part of my judgment was written for delivery last term, but neither of the parties having appeared to hear it read, it was not delivered. Since that I find that my judgment in *McInnes* v *Haight* has been reversed by the Court of Common Pleas (ante p. 20).

If there were only one court of appeal from the judgments of the county courts, or if only one of the two courts of appeal had given judgment on the subject discussed here, it would be my obvious duty to give my decision in harmony with that of the Court of Common Pleas in *McInnes* v. *Haight*, and to bow to that judgment without further words on the subject; but the unrevised judgment of the Court of Queen's Bench, *Feehan* v. *Bank of Toronto*, compels me either to adhere to, or give, a judgment contrary to my own convictions of what is right.

I think it, therefore, my duty to adhere to what, after unusual care and thought, I have concluded to be the fittest judgment to give in the premises After reading the reasons given by the Court of Common Pleas for revising my judgment, I think it proper to say—

1st. I do not consider that the legislature had any intention to put a stop to the taking or making bills of sale and chattel mortgages The old system, sanctioned by the common law, of allowing them to be taken and made and kept secret, was undoubtedly viewed with disfavor Then the first statute passed (12 Vic. cap. 74) declaring these conveyances void against execution creditors, unless registered, it is right to assume that the keeping them secret, and not the taking security by means of them, was the mischief intended to be cured It was the secrecy intended to be made difficult, and not the taking or making of them. For if the Legislature had wished to remedy more than the secrecy, I must suppose they would have effected their intention more certainly and readily by making all such instruments illegal.