mand which might have been specially endorsed under the 25th section, and the amount claimed is endorsed on the writ as required by sec. 8, and that execution may be issued for the amount really due."

I have not felt myself warranted in setting aside the service of the writs, declarations, &c, on the grounds suggested on which there are conflicting affidavits.

The order will go to set aside the judgments in both cases for irregularity, and the executions issued thereon, and all proceedings taken thereon, and on the defendants undertaking to bring no action the order will go to set aside the judgments and subsequent proceedings with costs. Order accordingly.

COMMON PLEAS.

Reported by E. C. Jones, Esq., *Barrister-at-Law.*

Grand Trunk Railway Company v. Lees.

Chattel Mortgages—Renewal.

Chattel mortgages filed under 12 Vic. c. 74, do not require refiling under 20 Vic. c. 30.

Interpleader issue, to try whether certain locomotive engines and railway cars, seized by the sheriff of Leeds and Grenville on a writ of *fi fa.* issued at the suit of the defendant against the goods of the Ottawa and Prescott Railway Company, were at the time of the delivery of that writ to the sheriff the property of the plaintiffs as against the defendant. The trial took place at Brockville, in April last, before *McLean*, J. The plaintiffs put in and proved an indenture, dated 26th July, 1855, made between the Ottawa and Prescott Railway Company of the first part, and the Commercial Bank of the second part; reciting that the Commercial Bank held certain bills of exchange and promissory notes (set forth), made by or for the benefit of the Ottawa and Prescott Railway Company; and that the said Ottawa and Prescott Railway Company were indebted to the Commercial Bank in a further sum of money paid, amounting in the whole to £29,578 17s. 10d.; whereby it was witnessed that in consideration of such debt, and of 5s. 1d, the Ottawa and Prescott Railway Company did grant, bargain, sell, assign, &c., to the Commercial Bank and their assigns, the personal property specified in schedule A, to the said indenture annexed, on condition that the conveyance should be void on payment of the said sum and interest in one year, with usual covenants and a power of sale. All the chattels above mentioned were specified in schedule A. This was filed on the 1st August, 1855, in the office of the clerk of the county of Leeds and Grenville, together with affidavits of execution, and of *bona fides*, in the usual form. On the 9th July, 1856, it was refiled, with a statement showing the amount then due on the mortgage to be £26,756 1s. 7d.; and it was refiled on the 7th July, 1857, with a statement showing the amount then due on the mortgage to be £26,897 11s. 3d. There was no renewal or refiling after this. On the 26th March, 1858, the Commercial Bank assigned the mortgage, &c., to the plaintiff, for a consideration of £27,930 7s. 9d., which was paid, and the bills and other securities held by the Commercial Bank against the Ottawa and Prescott Railway Company were given up to the latter, when the consideration money was paid to the Bank by the plaintiffs. This assignment was made with the concurrence of the president of the Ottawa and Prescott Railway Company. The money paid by the plaintiffs to the Commercial Bank was raised by the sale of preferential bonds, issued under the 19 & 20 Vic. cap. 3. The president of the Ottawa and Prescott Railway Company, on the 27th March, 1858, left with the deputy receiver-general a letter as follows: "Please pay to the Commercial Bank of Canada, as order, the sum of £27,930 7s. 9d. currency, ex Grand Trunk Relief Acts of 1856 and 1857, on account of the Ottawa and Prescott Railway Company, with interest from the 11th instant;" dated 27th March, 1858, and signed by the president of the Ottawa and Prescott Railway Company; which letter, however, was never acted upon.

On these facts a verdict was taken for the plaintiffs, with leave to the defendant to move the court, on any objections which he can urge in term; the court to have authority to act upon the evidence and to draw any inference, in the same manner as a jury could do.

In Easter term, *Patterson*, C. S., obtained a rule *nisi* accordingly, on the following grounds: first, that the conveyance under which the plaintiffs claim is void as against the defendant, for want of compliance with the provisions of the Chattel Mortgage Registry Acts, the property having remained in the possession of the mortgagors; secondly, that the plaintiffs cannot legally hold or own the property in question under the conveyance, or in the manner shown by the evidence; and, thirdly, that the mortgage was paid and discharged by payment to the Commercial Bank of £27,930 7s. 9d. of the money raised under the provisions of the 19 & 20 Vic. cap. 3, and 20 Vic. cap. 1]; and that immediately after that payment, the property revested in the Ottawa and Prescott Railway Company, and so remained vested, and was liable to seizure.

Bell (of Belleville) showed cause. He contended that, as to the second objection, there was no reason why the Grand Trunk Railway Company might not become owners or mortgagees of chattel property; and as to the third, that although the authority given to the Grand Trunk Railway Company to raise money by preferential bonds under the statute was coupled with a direction as to the uses to which that money should be applied, yet the money was their own, and they complied with the condition of assisting the Ottawa and Prescott Railway Company by advancing this sum to satisfy the Commercial Bank, and had a right to secure the repayment. As to the first objection, he argued that the statute 20 Vic., from its very language, could not apply to chattel mortgages executed before it was passed; that there could be no refiling, therefore, of this mortgage under this statute, and that the former statutes were repealed.

Wilson, Q. C., *contra*, abandoned the second objection. He argued that the statute showed that the legislature contemplated a gift, and not a loan, to the Ottawa and Prescott Railway Company; and the letter or draft of the 29th March, 1858, showed that the latter company so understood the arrangement; and if so, the assignment of the security given to the Commercial Bank was void as against a creditor, being without consideration. He relied principally on the last objection, insisting on the necessity of refiling the mortgage in order to maintain its efficacy. The year subsequent to the last filing expired in the month of July, 1858, and from that time it became void as against creditors, inasmuch as the Ottawa and Prescott Railway Company remained in possession. He insisted also that the assignment should have been filed in like manner. He referred to *Kissock* v. *Jarvis*, 6 U.C.C.P. 393.

Draper, C. J., delivered the judgment of the court.

The first objection taken is the most important. Under 12 Vic. cap. 74, it is by sec. 1 enacted, that every mortgage of goods and chattels which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless filed in the manner directed; and by sec. 3, every mortgage filed in pursuance of the act shall cease to be valid as against creditors, &c., 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 true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed, be again filed. This latter enactment has been construed to require a refiling from year to year, in order to keep the mortgage alive.

The mortgage in question was executed on the 26th July, 1855. It was filed, in compliance with the foregoing statute, on the 1st August, 1855, and was duly filed on the 9th July, 1856, and another on the 7th July, 1857;—so that the provisions of the 12 Vic. were complied with.

On the 27th May, 1857, the 20 Vic. cap. 3, was passed, the 14th section of which repealed the 12 Vic. cap. 74, with this saving, that all mortgages registered under the provisions of that act shall be held and taken to be as valid and binding as if the said act had not been thereby repealed.

It is, I think, impossible to hold that this expression can be construed as keeping alive the provisions of the repealed act, as to refiling mortgages which had been executed and filed while it was in force. The saving clause is to keep mortgages registered, valid and binding, which is widely different from declaring that they shall cease to be valid—unless refiling shall be continued—under the 3rd section of the repealed statute.

We must therefore look to the provisions of the new enactment,