

The use of the word "approximately" created some trouble. It indicated such a lack of definiteness in the amount as to suggest that a thing so vaguely described could not have been the real subject of the contract. The parties agreed to regard it as indicating the right to call for more than the 150 tons, and fixed the limit at 10 per cent.

As the plaintiffs recovered only part of their claim, and this upon a theory not put forward in the correspondence or indicated in the pleadings, there should be no costs.

Judgment declaring the defendants liable to pay damages based on amount by which delivery in third year under contract fell short of 165 tons; no costs.

---

MIDDLETON, J.

MAY 28TH, 1920.

\*W. G. CRAIG & CO. LIMITED v. GILLESPIE.

*Chattel Mortgage—Affidavit of Bona Fides Made by Secretary-treasurer of Mortgagee-company—Omission of Statement of Deponent's Knowledge of Facts—Bills of Sale and Chattel Mortgage Act, R.S.O. 1914 ch. 135, sec. 12 (3)—Fatal Defect—Mortgage Void as against Creditors of Mortgagor—Assignment of Book-debts to Creditor of Insolvents—Unjust Preference—Pressure—Assignments and Preferences Act, R.S.O. 1914 ch. 134, sec. 5.*

Action by a chattel mortgagee and assignee of book-debts to establish its right to priority over the assignment for the benefit of creditors under which the defendant claimed. The goods and debts were sold by arrangement, and the proceeds awaited the determination of this action.

The action was tried without a jury at Kingston.

F. King, for the plaintiff company.

A. B. Cunningham, for the defendant.

MIDDLETON, J., in a written judgment, said that the plaintiff company's security was not attacked within 60 days (Assignments and Preferences Act, R.S.O. 1914 ch. 134, sec. 5 (3)), nor was the assignment to the defendant (nor any assignment) made within 60 days, after the transaction (sec. 5 (4)), and so there was no statutory presumption of invalidity. On the facts, there was

\* This case and all others so marked to be reported in the Ontario Law Reports.