

Q. B.]

NOTES OF CASES.

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that the deputation was therefore valid. (2) That the proper construction of the same was "to hold the 2nd Division Court of the County of Hastings to be holden on Monday, &c.," and that his appointment continued until he had performed the purpose for which it was made. (3) That the effect was to clothe Mr. Fralick with all the powers of the Junior Judge during the time of his appointment, wherever he might be within the county. And the rule was therefore made absolute to rescind the order made by GALT, J. for a prohibition, CAMERON, J. dissenting.

G. B. Gordon, for the rule.

Holman, contra.

ROBINS V. CLARK.

Interpleader—Chattel mortgage—Defective registration—Fraudulent preference—R. S. O., cap. 118.

G. & E., bakers, on the 18th May, 1880, agreed with defendants that if the latter would advance them a quantity of flour they would give them a chattel mortgage on their horses, waggons, and baking utensils. Defendants accordingly delivered from day to day a quantity of flour to G. & E. On 26th May, the chattel mortgage not having been executed, the defendants wrote to G. & E. to have it done. The mortgage was accordingly drawn, covering the sales made, and was executed by the mortgagors only on 10th June, 1880, and filed on 12th. G. & E. absconded on the 12th, and on the 14th defendants took possession under a clause in the mortgage which allowed them to do so "in case mortgagors should attempt to sell, dispose of, or in any way part with the possession of the goods," and removed them to their own warehouse. The mortgage also contained a redemise clause. The jurat of the affidavit of *bona fides* was not signed by the commissioner. The defendants swore that they would not have advanced the flour if this security had not been promised, and that they had no intention of getting a preference over other creditors. The plaintiff's writ of attachment issued on the 17th June, and the sheriff seized the goods thereunder on the 30th June.

Held, that the mortgage must be considered as having been given when the contract to give it was entered into, viz., when the flour was first sold on credit on the 18th May, and therefore

there was no preference of defendants, who became creditors only by this act.

Held, also, on the authority of *Risk v. Shemin*, 21 Gr. 250; and *Allan v. Clarkson*, 17 Gr. 560, that the agreement being one to enable the mortgagors to carry on their business, the transaction did not come within the mischief aimed at by R. S. O., Cap. 118; and the mortgage being therefore a valid security the defendants had the right to retain the goods, subject only to the liability to an action of trespass at the suit of the mortgagors for taking possession pending a demise to the latter.

J. E. Rose, for plaintiff.

E. D. Armour, for defendants.

REGINA V. McALLEN.

Certiorari—Validity of, questionable on motion to quash conviction.

In showing cause to a rule nisi to quash a conviction, objection may be taken to the regularity of the certiorari, and a separate application to supersede it need not be made.

Where, therefore, on an application made after notice to the convicting justices for a rule for a certiorari the rule was refused, and on a subsequent *ex parte* application on the same material the rule was obtained, it was

Held, affirming the decision of GALT, J. that the notice of the first application would not enure to the benefit of the defendant in his second application, and that the certiorari was irregularly obtained for want of notice to the convicting justices; and a rule to quash the conviction was therefore discharged.

CAMERON, J. dissente, being of opinion that a substantive motion should be made to quash the writ of certiorari; and that the conviction being before the Court under a writ of certiorari un-superseded, the validity of the conviction should be inquired into.

BARBER V. MORTON.

Bill of exchange—Principal and surety—Withholding of facts from surety—Discharge of latter.

The defendant agreed with plaintiff and P., the acceptor of a bill of exchange, that he would become responsible for the price of such goods as P. should order of the plaintiff. P. sent a written order to the plaintiff, stating