

sold the goods that he was, if necessary, to be given security upon them, and there is no doubt, upon the authorities cited by Mr. McMaster, that an unregistered chattel mortgage which is held under an agreement that it shall not be registered is a void chattel mortgage from the beginning, that nothing private can be agreed upon between the maker of the mortgage and the mortgagee; but, except in the case referred to, I find no case in which a bona fide agreement to give security vitiates a chattel mortgage honestly given without knowledge of insolvency and without any intention of giving an unjust preference over other creditors. It may be that because he had a prior agreement, which was not carried out by reason of the fact that carrying it out would have embarrassed the credit of the debtor, makes the burden all the more incumbent upon the defendant, and at the same time more difficult to satisfy, of convincing the Court that when he did take the chattel mortgage he did so with honesty of purpose and in good faith, and without knowledge or belief that he was getting an unjust preference on the estate of the insolvent debtor.

Whether such is the case or not, I think it cannot be said in this case that the defendant was aware of such facts and circumstances when he took the chattel mortgage as would make it void as against creditors. I think the case is governed by the case which has been cited of *Baldocchi v. Spada*, 7 O. W. R. 325, 8 O. W. R. 705, and which was affirmed by the Supreme Court, a copy of the judgment of which has been furnished to me.

It seems to me that it would be going a long way to hold that what was laid down in that case is of no avail to the defendant by reason of the fact that he took the agreement from the debtor when he sold the goods that he should have security upon them, or the fact that the security was not given in order that the credit of the debtor might not be destroyed. Even if the existence of such an agreement would in any sense destroy the validity of the chattel mortgage, even taken under circumstances in the best of good faith, I think that in this case it would not have relation, at any rate, to the real estate mortgage, which was taken as further collateral. There was no agreement for that, and it seems to me that, even if plaintiff succeeds against the chattel mortgage on that ground, it does not apply to the real estate mortgage, which I also find was taken by defendant without his knowing or having reason to believe that the debtor was insolvent.