

Chan, Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Divisional Court.]

[September 22.]

*Assignment for benefit of creditors—Chattel mortgage—Proof of consideration—Onus of proof—New trial.*

In an interpleader action where the plaintiffs were a chattel mortgagee and an assignee for the benefit of creditors of the judgment debtor to try the right to the proceeds of the goods sold by the sheriff, the assignee was examined and showed that he was a brother and an employee of the assignor, and that all the money he had collected under the assignment had been used by him in carrying on the assignor's business, and not in payment of creditors, and the mortgagee put in and proved the chattel mortgage, but gave no evidence of a debt due or of pressure used. On this the judge charged the jury that in his opinion there was no evidence of a debt or of pressure, and that if they believed the assignment was made for the purpose of defeating or delaying creditors it was bad, and he refused to allow the consideration to be proved after the plaintiffs closed their case, and the jury brought in a verdict for the defendant. On a motion to enter a verdict for plaintiffs, or for a new trial, it was

*Held, per BOYD, C.*—The plaintiffs proved enough to cast the burthen of attack on the defendant. Proof of the mortgage duly executed showed that the property and title to the goods passed from the judgment debtor to the mortgagee before the seizure. The execution creditor should displace this ownership by showing want of consideration or other reason. Suspicion would not justify the conclusion that the mortgage was a voluntary instrument contrary to its purport. There is no evidence that the wife knew of the husband's insolvency, and concurred with him in an attempt to gain a preference at the expense of the other creditors.

*Per PROUDFOOT, J.*—That the mortgage might be valid if given for a present advance of money for carrying on the business or other proper purpose, and that insolvency would not be a circumstance shifting the onus of proof, and that the production of the mortgage would be *prima facie* evidence, and that as the jury had found the evidence sufficient to justify their verdict that the assignment was not honestly made, the verdict should not be inter-

ferred with on that point, but as the plaintiff, the trustee, appeared to have been misled, and was refused leave to supplement his evidence, a new trial should be granted to him.

*E. Furlong*, the trustee, plaintiff in person.

*F. Fitzgerald*, for the assignee plaintiff.

*I. Parks*, for the defendant.

Proudfoot, J.]

[September 29.]

POWELL V. PECK ET AL.

*Mortgage—Rate of interest—Payment into court—Court rate of interest—Rate of interest after maturity of mortgage—Contract or damages.*

A made a mortgage to B which matured June 1, 1880, and bore interest at 8 per cent. per annum. During certain legal proceedings in which A disputed his liability to pay the balance due on the mortgage, the money was paid into court, where it remained until April, 1886, when it was paid out to B, who had succeeded in establishing his right to it. The Master, in taking the accounts between the parties, allowed no interest on the money paid in, and B got it with the usual rate of interest allowed by the court, which was less than the rate provided for in the mortgage; but he allowed interest on the mortgage after its maturity at the rate therein provided up to December 22, 1886, the time appointed for payment, and certified that he allowed it as a matter of contract, and not as damages.

On an appeal and cross appeal from both of these findings, it was

*Held*, following *Sinclair v. The Great Eastern Ry. Co.*, L. R. 5 C. P. 391, that A should pay interest beyond the court interest, and, following *St. John v. Rykert*, 10 S. C. R. 278, that 8 per cent. was not payable after June 1, 1880, but only the legal rate. *McDonald v. Elliott*, 12 O. R. 98, referred to and distinguished.

*Delamere*, for plaintiff.

*Beck*, for defendants.