

plaintiff Clarkson, under the provisions of the Ontario statute. On the 14th November, while the goods were in the possession of McMaster & Co., the action in question was instituted by the assignee to restrain McMaster & Co. from selling the goods. Prior to the trial McMaster & Co. realized the goods, receiving the proceeds.

Mr. Justice MacMahon, at the trial, held the mortgage to be void for want of registration, and was of opinion that under the statute amending the Chattel Mortgage Act, subsequent taking of possession did not remedy this defect, and he ordered McMaster & Co. to account to the assignee for the proceeds.

The Court of Appeal reversed this decision (Hagarty, C. J., dissenting) and dismissed the action. The case was then taken to the Supreme Court, where the decision of the Court of Appeal was reversed. We quote the judgment of Strong, C. J. :—

In the view which I take of this case, it is not necessary that I should express any opinion as to the validity and *bona fides* of the mortgage so far as it is impeached upon the grounds of the mortgagor's insolvency and as a fraudulent preference, and therefore I refrain from doing so. I may say, however, that upon facts disclosed by the evidence, which are undisputed, and which are therefore open for consideration by an appellate Court, I should entertain grave doubts as to the validity of the transaction as against the creditors of the mortgagor, apart altogether from the non-delivery of possession, the want of registration, and the express agreement not to register the mortgage, questions which I propose to consider.

Under the statute law regulating chattel mortgages in the Province of Ontario, applicable to the mortgage now in question, I am of opinion that the appellants are entitled to attack the transaction, thus differing from the majority of the Court of Appeal, and agreeing in the conclusion of the learned Chief Justice of Ontario.

The general Act, relating to mortgages of chattels (R.S.O., ch. 125), was amended and extended by the Ontario Statute (55 Vic., ch. 26). By section 2 of that Act, it was enacted as follows :—

“ In the application of the said Act, and of this Act extending and amending the same, the words ‘ void as against creditors ’ in said Act shall extend to simple contract creditors of the mortgagor or bargainor suing on behalf of themselves and other creditors, and to any