

McMASTER, & Co., & THE BANK OF OTTAWA
v. GARLAND.

Interpleader—Equitable assignment of proceeds of sale of goods—Registration of—R. S. O. cap. 119.

B., at the suggestion of McMaster & Co. his creditors consigned to S. S. & Co. for sale a quantity of goods. To enable him to do this McMaster & Co., advanced him \$250 to pay certain claims, and S. S. & Co. accepted his draft for \$800 on 31st. May, 1880, which the Bank of Ottawa discounted. B., on the 28th of May, 1880, sent to McMaster & Co. an order for \$2,159 upon S. S. & Co., to be paid out of the proceeds of the goods, which S. S. & Co. by letter on 30th May, 1880, agreed to pay, if there were sufficient funds after paying their own charges and commission. On the 31st of May, 1880, S. gave an order in favour of the Bank of Ottawa upon S. S. & Co., for \$1461.47 to be paid out of proceeds of sale, and S. S. & Co. were notified by telegram. The goods were advertised for sale on 11th June, 1880. On that day by virtue of a writ of *fi. fa.*, dated 8th June, 1880, against the goods of B., at the suit of defendants, the sheriff took possession of the goods and interpleaded. The defendants on ascertaining the amount of S. S. & Co's. claim, paid it.

Held, that by so doing they had not released the goods from the lien of S. S. & Co. for the benefit of other creditors, and to their own prejudice; but that S. S. & Co. thereafter held the goods for the defendants' benefit to the extent of their claim, just as they did for the other creditors on their respective orders; defendants were therefore entitled to rank first for the amount, and then the plaintiffs according to their priority.

It was contended for defendants that the orders given to the plaintiff were within the Chattel Mortgage Act, and should have been registered; but *held*, that the actual delivery of the goods by B. to S. S. & Co., followed by the actual and continued change of possession dispensed with the necessity for registration.

Per OSLER J.—Under the authority of *Pater-son v. Kingsley*, 25 Gr. 425, such orders amount to equitable assignments, and are not within the spirit of the act.

J. K. Kerr. Q. C., and W. R. Mulock for McMaster & Co.

Beaty, Q. C., and A. Cassels, for the Bank of Ottawa.

McCarthy, Q. C., for the defendant.

REID V. MAYBEE.

Malicious arrest—Reasonable and probable cause—Termination of proceedings before magistrate—Endorsement of warrant—New trial.

Defendant went with plaintiff to get draft cashed for the latter; and during the journey the plaintiff boasted that he was going to get a much larger sum from Scotland, whence this draft came. It did not appear that the plaintiff made this statement with a view to obtaining credit with defendant. He deposited money with defendant, and obtained goods from him for some time, which were charged against the funds in deposit, and largely exceeded his deposit. Defendant had him arrested for obtaining goods under false pretences, thereby hoping to have his account settled. The plaintiff was allowed to go on his own recognizance to appear the next day, but, being unable, did not appear, and the charge not being pressed, the matter dropped, and the magistrate made his order, not in writing, for a discharge.

The warrant was issued in the united counties of Northumberland and Durham, and was endorsed by a magistrate of the county of Peterboro, as follows: "This is to certify that I have endorsed this warrant to be executed in the county of Peterboro," and it was executed in the latter county. There was no evidence of any proof to the Peterboro magistrate of the handwriting of the issuing magistrate, and the endorsement did not follow the schedule K, o. 32 and 33 Vic. c. 30, sec. 23. A verdict was entered for the defendant at the trial.

Held, that on account of the warrant being defective the arrest was illegal, and the plaintiff was entitled to recover in trespass.

Held, also, that by the production of the papers and proceedings before the magistrate, it apparently appeared that the proceedings on the warrant had terminated.

A new trial was therefore directed

Kerr, Q. C., (Cobourg,) for the plaintiff.

J. E. Rose, and Ketchum, for the defendant.