

two territorial districts (as was the case here) the Lieutenant-Governor in council may by proclamation declare that the junior district shall be detached from the provisional district and erected into a separate provisional district. By proclamation dated the 21st February, 1898, it was declared that on and after the 4th April then next the district of Rainy River should be detached from Thunder Bay and erected into a separate district. The writ was, in fact, issued by the person who was, before the 4th April, the deputy clerk of the District Court at Rat Portage, but at the time of the issue no Judge or officers had been appointed for the District Court of the new district. The defendants entered a conditional appearance, pleadings were delivered entitled in the District Court of Rainy River; the defendants in theirs objecting to the jurisdiction, and the case came on for trial before the Judge of the District Court of Thunder Bay, at Rat Portage, who, the defendants again objecting, directed all amendments to be made to get rid of the objections, and, after a trial with a jury, gave judgment for the plaintiff.

*Held*, on appeal, that the writ was a nullity and incapable of amendment so as to make it good; that the defect was such as could not be waived by the defendants; it was a complete defect; and the proceedings should be stayed in toto, and the plaintiff ordered to pay the defendant's costs from the beginning.

*D. L. McCarthy*, for defendants. *E. Tylour English*, for plaintiff.

Boyd, C., Ferguson, J., Robertson, J.]

[March 6.

ROGERS v. CARROLL.

*Chattel mortgage—Affidavit of bona fides—Variation from statutory form—Liability of indorser—Payment of notes by mortgagee—Change in form of security—Execution creditors—Priorities—Assignment f.b.o.c.—Preference—Presumption—Rebuttal.*

The affidavit of bona fides made by the mortgagee in respect of a chattel mortgage given to secure the mortgagee against liability in respect of his indorsement of certain promissory notes for the mortgagor employed the expression, "and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage," instead of the statutory words, "and truly states the extent of the liability intended to be created and covered by such mortgage." It also contained this clause, "and for the express purpose of securing me, the said mortgagee therein named, against the payment of the amount of such notes indorsing liability for the said mortgagor," instead of the words, "and for the express purpose of securing the mortgagee against the payment of the amount of his liability for the mortgagor."

*Held*, that the mortgage was not void as against creditors by reason of these variations from the statutory form. *Boldrick v. Ryan*, 17 A.R. 253, distinguished.