

by the Act required, the mortgage shall be absolutely null and void as against creditors of the mortgagor and as against subsequent purchasers or mortgagees in good faith for valuable consideration.

The affidavit of the attesting witness filed with this mortgage sets forth that it was executed "on Tuesday, the 9th day of January, one thousand nine hundred and . This requirement of the statute is imperative, and it must be construed strictly. Failure to mention the year in which it was executed is, in my opinion, a fatal omission, and such a non-compliance with the requirements of the Act as renders the mortgage void.

For the above reasons, apart from any others that were urged, the mortgage should be set aside, and the mortgaged assets held by the assignee freed therefrom. If any of the goods and chattels covered by the mortgage or the proceeds thereof have been received and not accounted for by defendant, they must be accounted for and the proceeds thereof paid to the plaintiff, and there will be a reference to the Local Master at Ottawa to ascertain the amount if the parties cannot agree.

The proceeds of the sale of the mortgage assets which have been paid into Court, pending action, will be paid out to the plaintiff.

In view of the circumstances, particularly of the insolvency of the mortgagor at the time the mortgage was made, and of the bill of sale later on made by Arthur to Alfred, who was and had been manager of Arthur's business and had full knowledge of its financial condition, the net proceeds of the mortgaged assets will be applied, first towards payment of the claim of Arthur's creditors, and then towards those of Alfred's creditors.

Owing to the form in which the first action was brought, I think that, instead of costs being awarded against him, the defendant should be paid out of the estate his costs down to the consolidation of the two actions; plaintiff also to be entitled to costs of action out of the estate. Costs of the reference are reserved until after the Master's report.