defendants assumed jurisdiction, and even if they had none, I do not think they would be relieved from making a proper return of the conviction thus made.

Judgment for plaintiff on demurrer.

FOURTH DIVISION COURT, COUNTY OF ONTARIO.

POLLARD v. HUNTINGDON.

Chattel mortgage—Defective jurat.

The omission of the word "sworn" in the jurat to the affidavit of *bona fides* is fatal.

[Whitby, April 18th, 1880.

This was an interpleader case, and the plaintiff claimed the goods under a chattel mortgage, which complied with the statute in every respect, except that in the *jurat* of the affidavit of *bona fides* there was a blank space, where the word "sworn" is usually placed.

DARTNELL, J. J.—I think the omission fatal, and that the reasons which governed the court in *Nesbitt* v. *Cock* (4 App. Rep. 200) apply with equal force here. The blank could have been filled in with the words "taken," "affirmed," "signed," "declared," "read over," or others of like nature, and it would be necessary here, as in the case cited, to call the Commissioner to prove what was actually done. The creditor is entitled to have *on record* complete evidence of the due and proper administration of the oath of *bona fides*. This is lacking here, and the plaintiff must fail. Independent of this the transaction in question is void under R. S. O. cap. 118, sec. 1.

Judgment barring the claimant with costs.

UNITED STATES REPORTS.

SUPREME COURT OF MISSOURI.

SMITH *v.* THE ST. LOUIS, KANSAS CITY, AND NORTHERN RAILWAY COMPANY, APPELLANT.

1. *Railroad Companies.—Duty to Employés as to Mechanical Appliances.*—Railroad Companies are bound to use appliances which are not defective in construction; but as between them and their employés they are not bound to use such as are of the very best or most approved description. If they use such as are in general use, that is all that can be required. This principle is applied to the use of the T rail for a guard to railroad switches, it appearing that, although a guard made of U rail would be safer for employés and would answer the purposes of the Company equally as well, yet the T rail was the one in general use.

2. *Continued.—Knowledge of Danger.*—A brakeman who continues in the service of a railroad company with knowledge that the guard of a switch is made of T rail, cannot recover for injuries sustained in consequence of his foot being caught between the guard and the frog, notwithstanding it may appear that if the guard had been made of a different rail it would have been less dangerous.

[*American Law Review*, 1880, *p.* 289.]

This was an appeal to the Supreme Court of Missouri from the Circuit Court of Jackson County. Hon. S. H. Woodson, presiding.

The case is stated in the opinion of the court.

Wells H. Blodgett, for appellant.

L. C. Slavens, for respondent.

HENRY, J. Plaintiff was employed as a brakeman by defendant, and, in attempting to uncouple some cars, was knocked down and his foot was run over by the car next behind him, inflicting an injury of so serious a nature as to render amputation of the leg above the knee necessary. He went between the cars while they were in motion, removed the coupling-pin, then went back to take out the link, and, while walking between said cars, his right foot outside, and his left foot inside of the rail, his left foot was caught and held fast between the guard-rail and that of the main track. It was thus that the accident occurred, and this action is to recover damages for the injury. The particular negligence alleged in the petition was, first, that the guard-rail was unnecessary where it was placed; and, second, that said guard-rail was constructed of railroad iron, known as the T rail, instead of a different kind of rail, which would have been as serviceable to defendant and less dangerous to its employés. The first ground was abandoned on the trial, and plaintiff, relying on the second, introduced evidence tending to show that a guard-rail of railroad iron, known as U rail, would have been as serviceable to the company and less dangerous to its servants; that, owing to the form of the U rail, his foot could not have been caught and held as it was in the T rail.

Donnelly, who testified for plaintiff, stated that the T rail is in general use in this country; that there are some U rails in use on the bridge at Kansas City; that he knew of no other place where that kind of rail was in use. Knickerbocker, for plaintiff, testified that he had had about twenty years' experi-