

BRITTON, J.

MAY 4TH, 1916

CLIFTON v. TOWERS.

Assignments and Preferences—Chattel Mortgage—Duress—Insolvency—Knowledge—Intent to Defraud Creditors—Instrument Executed within 60 Days before Assignment for Benefit of Creditors—Presumption—Rebuttal—Evidence—Assignments and Preferences Act, R.S.O. 1914 ch. 134, sec. 5—Sale of Chattels by Assignee—Conversion—Claim by Chattel Mortgagee—Action to Enforce—Costs.

Action by a chattel mortgagee, against the assignee for the benefit of creditors of the chattel mortgagors, to recover, out of the proceeds of goods sold by the defendant, the amount of the plaintiff's claim upon the chattel mortgage.

The action was tried without a jury at Woodstock.

R. N. Ball, for the plaintiff.

W. S. Brewster, K.C., for the defendant.

BRITTON, J., in a written opinion, set out the facts. He said that one Forgie and his wife made the chattel mortgage to the plaintiff on the 25th August, 1915. They owed the plaintiff on the 11th January, 1915, \$574.45, for which they gave him a promissory note. The note was twice renewed, interest being added on each renewal. On the 25th August, 1915, the debt had mounted to \$621.92, and the plaintiff, with a witness, one Hill, then a constable, went to the Forgies' house and insisted upon their executing a chattel mortgage for \$621.92, which they did. On the 14th October, 1915, they assigned to the defendant.

The defendant pleaded that, when the chattel mortgage was executed, the Forgies were in an insolvent condition, and that the mortgage was a preference over the other creditors of the mortgagors, and that the mortgage was obtained by the plaintiff by threats, duress, and fraud.

The learned Judge said that there was not, in his opinion, any duress or fraud practised upon the Forgies. The mere fact that Hill, who accompanied the plaintiff and signed as a witness, was a constable and wore a badge, would not constitute duress; and the threats of legal proceedings made were no more than any creditor would have the right to make when honestly pressing for security for or payment of a just debt.

The defendant sold the property covered by the mortgage, and had the proceeds. There was conversion; and the plaintiff