

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

H. E. Rose, K.C., for the appellant.

J. L. Whiting, K.C., for the plaintiffs, respondents.

MEREDITH, C.J.C.P., in a written opinion, said that the plaintiffs were merely execution creditors of Morgan, and had no better right to the goods in question than he had at the time of the seizure of them, in the possession of the McGuinnesses, on the 21st February. The goods being in the possession of the McGuinnesses, not in that of the execution debtor, the onus of proof was, in the interpleader proceedings, properly put upon the plaintiffs. The parties went to trial on pleadings in which the plaintiffs alleged that Morgan owned the goods in question until the 7th January, 1916, and then made a transfer of them to the defendant Sarah J. McGuinness, in fraud of his creditors. Upon such a claim as that, it was difficult to understand how the plaintiffs could hope to succeed if the goods in question were covered by the mortgage made by the McGuinnesses to the defendant Wilson, it never having been questioned that the defendant Wilson was a mortgagee in good faith, for value, and without notice of any ownership at any time by Morgan of the goods in question.

That the chattel mortgage was intended to cover all the goods the McGuinnesses possessed, no one could reasonably deny; nor could any one reasonably contend that it did not. It contained these very comprehensive words (following a description of specified chattels): "Together with all other the farm chattels, property, goods and effects, which are now upon the within-described premises." No question arose regarding the sufficiency or insufficiency of such a description to satisfy the requirements of the Bills of Sale and Chattel Mortgage Act. The goods in question were not on "the premises" when a bill of sale from Robert H. McGuinness was made to his sister, the defendant Sarah J. McGuinness, and the description in the mortgage was the same as that in the bill of sale; but it was not all the goods on the premises when the bill of sale was made, but when the chattel mortgage was made, that the general description covered.

There was no substantial evidence that the transfer of the property by Morgan to the McGuinnesses shortly before the 6th January, 1916, was made in fraud of creditors. That it turned out that Morgan was then insolvent, and soon afterwards absconded, was very far from proving that the McGuinnesses were fraudulent buyers.

The appeal should be allowed, and the finding of the trial Judge reversed, with costs throughout.