

Held, affirming the decision of the Supreme Court of Nova Scotia, that there was no delivery to the mortgagees under the mortgage which transferred to them the possession of the goods.

The Bills of Sale Act, Nova Scotia, R.S.N.S., 5th ser., c. 92, by s. 4, requires a mortgage given to secure an existing indebtedness to be accompanied by an affidavit in the form prescribed in a schedule to the Act, and by s. 5, if the mortgage is to secure a debt not matured, the affidavit must follow another form. By s. 11, either affidavit must be "as nearly as may be" in the forms prescribed. A mortgage was given to secure both a present and future indebtedness, and was accompanied by a single affidavit combining the main features of both forms,

Held, affirming the decision of the court below, GWYNNE, J., dissenting, that this affidavit was not "as nearly as may be" in the forms prescribed; that there would have been no difficulty in complying strictly with the requirements of the Act; and though the legal effect might have been the same, the mortgage was void for want of such compliance.

Appeal dismissed with costs.

Russell, Q.C., for the appellant.

Borden, Q.C., and *Roscoe* for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

Q.B.D.]

[April 5.

CAMPBELL *v.* HALLY.

Assignments and preferences—Compromise by assignee—Action by creditor—
R.S.O., c. 124, s. 7.

Where a creditor obtains an order under subsection 2 of section 7 of the Assignments and Preferences Act, R.S.O., c. 124, authorizing him to bring an action in the assignee's name, the action so brought must be such as is justified by the scope of the order.

A creditor suing in the name of the assignee under this subsection cannot attack the *bona fides* of a compromise entered into before his action was brought between the assignee and the defendant, when the defendant cannot be restored to his original position.

Quære: Whether subsection 2 is not confined to cases in which an exclusive right of suing is given to the assignee by subsection 1.

Judgment of the Queen's Bench Division reversed, MACLENNAN, J.A., dissenting.

Shepley, Q.C., for the appellants.

Johnston, Q.C., for the respondents.

Q.B.D.]

[April 5.

OLDRIGHT *v.* GRAND TRUNK R.W. CO.

Railways—Railway station—Negligence—Damages.

A railway company is bound to provide for passengers safe means of ingress to and egress from its stations, and where a passenger arriving at a