the execution of that mortgage at Centreton, it was agreed that the land mortgage, which was a third mortgage on the farm, should be executed two days later, by which a considerable extension of time was given to Drinkwalter to pay his indebtedness to Elliott, and Drinkwalter then received back the two notes for $400, and a further note for $175, which had been accepted by Elliott as part of the cash payment of $800.

These mortgages were duly registered and filed. On 1st November Drinkwalter, on the application of the agent of the plaintiff Wade, executed the assignment.

There was no evidence to support the allegation that defendant Drinkwalter was insolvent, to the knowledge of defendant Elliott, unless knowledge ought necessarily to be imputed from the mere fact of the non-payment of the $400 note referred to.

Waite, who was called as a witness on behalf of defendant Elliott, denied that he had ever joined with Drinkwalter in the making of a $400 note. There was no question of the validity of the note for $175, which made up part of the cash payment of $800.

Defendant Elliott asserted that the transaction was entered into by him in good faith, without any fraudulent intent, and without knowing or having reason to believe that Drinkwalter was insolvent, and without the purpose or intent of injuring, defeating, or delaying Drinkwalter's creditors, and that he believed the fact to be that Drinkwalter, at the time he executed the securities and made the assignment, was not in insolvent circumstances, and that he had no knowledge to the contrary.

The action was tried before TEETZEL, J., at the Toronto non-jury sittings on 21st and 22nd May, 1907.

A. C. McMaster, for plaintiff.

F. M. Field, Cobourg, and J. H. Spence, for defendant Elliott.

TEETZEL, J.:—I think the plaintiff in this case has failed, for the reason that the defendant Elliott has satisfied the burden which the law casts upon him, by shewing that at the time he took the chattel mortgage in question he did not know and had no reason to believe that the debtor was insolvent or unable to pay his debts in full. The case is not nearly so strong upon its facts in regard to any knowledge which might be imputed to the defendant as the