

as against the creditors of Leatherdale other than the defendant company, and therefore fraudulent and void.

J. T. Mulcahy, for the plaintiff.

J. F. Boland, for the defendant company.

LATCHFORD, J.:—I found as a fact, at the close of the case, that Leatherdale was insolvent, to the knowledge of the defendant company's manager, at the time the mortgage impeached was given, and reserved judgment merely to enable Mr. Boland to submit—as he considered that he could—authority to establish that the verbal agreement made by Dawson, acting for the defendant company, with Leatherdale, to fill the orders the defendant company had theretofore refused to fill and to supply additional goods, coupled with the supply afterward of small lots of goods, brought the case within the exceptions mentioned in sec. 6 of the Assignments and Preferences Act, 10 Edw. VII. ch. 64, now R.S.O. 1914 ch. 134.

Numerous cases have been submitted, but none has application to the facts established in this.

The mortgage was not made "in consideration of a present actual bona fide sale or delivery of goods," and, therefore, does not fall within the protection afforded by sub-sec. 1 of sec. 6.

Nor is it validated by sub-sec. 5 (d) of the same section. The mortgage was indeed given for a pre-existing debt; but no advance in money was made by the defendant company to their debtor in the bona fide belief that the advance would enable him to continue his trade or business, and to pay his debts in full.

Mr. Dawson knew that Leatherdale's position was hopeless. His real and dominating purpose was to obtain from a person in insolvent circumstances security for a past, stale debt to the prejudice of the debtor's other creditors—the very kind of a preference the statute was passed to prevent.

There will be judgment declaring the mortgage void, and directing that the registration thereof be vacated, with costs.