

TEETZEL, J.

MAY 22ND, 1907.

TRIAL.

WADE v. ELLIOTT.

Bankruptcy and Insolvency — Assignment by Insolvent for Benefit of Creditors — Action by Assignee to Set aside Chattel Mortgage and Land Mortgage made by Insolvent—Previous Agreement—Absence of Knowledge of Insolvency by Mortgagee—Imputed Knowledge.

Action by Osler Wade, assignee in trust for the benefit of creditors of defendant James H. Drinkwalter, to set aside, as fraudulent and void and preferential as against the creditors of defendant Drinkwalter, a chattel mortgage executed by him to defendant Robert A. Elliott, on 25th October, 1906, for \$1,000 on all his stock in trade, comprised in his general store at the village of Centreton, and a land mortgage on his farm in the township of Haldimand, for the same sum, as collateral security. Defendant Elliott, who had been carrying on a general store at Centreton, entered into an agreement (which was in writing) dated 29th January, 1906, to sell the business to Drinkwalter, at 85 cents on the dollar, of the stock and fixtures as inventoried, payable half cash, and balance in 4 equal payments, spread over one year. The agreement contained this provision: "I also agree to give Robert A. Elliott, as security, mortgage on said stock till paid for, above stock to be kept up to the standard stock now carried, insurance loss, if any, payable to Robert A. Elliott." This agreement was carried into effect in March, 1906, defendant Drinkwalter then delivering to Elliott two promissory notes, one for \$400 dated 16th March, 1906, payable 6 months after date, with interest at 6 per cent., at the Dominion Bank, Cobourg, purporting to be made by himself and his brother-in-law Lewis Harnden, and the other for the same amount and same interest, of the same date, payable 9 months after date, purporting to be made by himself and his uncle Frank Waite. The chattel mortgage was not then executed. Drinkwalter paid the accrued interest on the first of the two \$400 notes, about the time it matured, and agreed to pay off the principal in two payments of \$200, within one month thereafter. He failed in this, and, Harnden having denied his liability as maker on the note, Elliott applied to Drinkwalter for the security by way of chattel mortgage which the agreement of sale provided for. Upon