

HON. MR. JUSTICE LATCHFORD.

FEBRUARY 13TH, 1913.

SATURDAY NIGHT v. HORAN.

4 O. W. N. 832.

Deed—Action to Set aside—In Defraud of Creditors—Evidence—Costs.

LATCHFORD, J., in an action by a creditor to set aside a mortgage, a deed of the equity of redemption of certain lands, and two chattel mortgages alleged to have been given by the debtor with intent to defraud his creditors, found upon the facts that the deed of the equity of redemption was fraudulent and set it aside, but dismissed the action as to the other instruments.

Plaintiffs given one-third costs of action, no costs to defendants, who were all represented by one solicitor.

Action by plaintiffs, unsatisfied creditors of the defendant James Horan, under a judgment for \$397.25 and costs, recovered against him on the 4th November, 1911, for the printing of an appeal book in the case of *Horan v. McMahon*, 17 O. W. R. 376; 18 O. W. R. 674.

Claiming that a mortgage, a deed, and two chattel mortgages made by the said defendant James Horan should be declared fraudulent and void as against the plaintiff and all his other creditors.

J. J. MacLennan, for the plaintiffs.

J. Fraser, for the defendants.

HON. MR. JUSTICE LATCHFORD:—One of the chattel mortgages—that dated 5th September, 1911—was in force when the writ herein was issued. Owing, however, to some inadvertence, it was not renewed within a year from its date, and, therefore, lapsed as against the plaintiffs.

The other chattel mortgage, which has been duly renewed, is dated the 27th, and the mortgage of lands attacked, the 31st October, 1910—the day preceding the trial of *Horan v. McMahon*. That action arose out of a dispute regarding one of the boundaries of a farm which Horan had bought in 1908 for \$2,800. At the time he purchased, he had but little money—only \$500 or \$600. He borrowed \$1,300 from one Taylor, by mortgaging the newly-acquired farm, and obtained an additional loan of \$1,200 from his mother, the defendant, Elizabeth Horan, partly in cash and partly by a promissory note for \$900 in which he joined. This note he discounted. His mother subsequently paid the note out of the proceeds of the crop on her own farm.