

The plaintiff's Counsel, while insisting upon the validity of the chattel mortgage, contended that the defendants were not in a position to take advantage of these objections because the Claimants had not proved a judgment or execution against Holmes and Kirkpatrick the mortgagors, and had therefore not shown themselves to be entitled to rely upon the provisions of the ordinance respecting chattel mortgages.

Judgment was given with costs against the plaintiff Quirk on the 6th day of September, 1888.

Quirk thereupon appealed to the Supreme Court of the North West Territories upon grounds which are disclosed in the notice of motion at page 5 of the 10 case.

Judgment was delivered on the 7th December, 1888, in favor of Quirk.

The present appeal is from that judgment and is brought on behalf of Thomson, Codville & Co. who are now appellants. The judgment is printed at page 6 of the case.

The chattel mortgagee at the trial objected and still objects that the defendants Thomson, Codville & Co. under the form of the interpleader issue in this case are obliged to establish that they had recovered a judgment and issued execution thereon, and that the cases relied upon by the appellants refer to a form of interpleader issue in which the judgment and execution of the creditor is recited in the issue. There is no such recital here. See *Chitty Forms*.

The defendants rely upon the two objections to the sufficiency of the chattel mortgage taken at the trial.

(1) The first is founded upon section 6 of Ordinance number 5 of 1881 which is in these words "All the instruments mentioned in this ordinance whether for the mortgage or sale of goods and chattels shall contain such sufficient and full description thereof that the same may be readily and easily known and distinguished."

The plaintiff contends that the description is abundantly clear and that the goods described in it may by such description be easily known and distinguished. The description is printed at page 4 of the Case.

See *McCall v. Wolf* 13 S. C. R. p. 130. *Harris v. Commercial Bank*, 16 U. C. R. 437-444. *Whiting v. Hovey* 14 S. C. R. 515.

(2) The second objection to the validity of the chattel mortgage is that the refileing was not a compliance with section 9 of Ordinance 5 of 1881.