

to the goods, judgment should be entered for execution creditor with costs.

The appeal was argued before a Divisional Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.).

W. E. Middleton, for plaintiff.

James McCullough, Stouffville, for defendant.

STREET, J.—I think it is plain that Robert Goodyear, the father of the claimant Samuel Goodyear and of the execution creditor James Goodyear, was indebted to certain other persons at the time he made the chattel mortgage to his son Samuel Goodyear, and that shortly after making it he became indebted to the execution creditor James Goodyear. The mortgage appears to have been made having as one of its objects, if not its sole object, the protection of the chattels against the existing creditors. The consideration stated in the chattel mortgage is \$300, and it is sworn by the claimant that his father, the mortgagor, owed him this round sum partly for money lent and partly for wages, but the father, who is living, was not called to substantiate the truth of this story, as he should have been under *Merchants Bank v. Clark*, 18 Gr. 594.

The chattel mortgage was made on 13th January, 1896, and was renewed in 1897, 1898, and 1899. During these years the mortgagor was living on a place of which he and the mortgagee, his son, were joint lessees, but the son was living on another place. During the year 1899, however, the son moved on to the place, and he and his father lived there together until the expiration of the lease in the year 1901. In the meantime, however, viz., in December, 1899, the son advertised the goods in question for sale under the chattel mortgage, and bought them all in himself, and they were never moved from the place. The father and son, the claimant, then continued to live together upon the place until the father left in February or March, 1901. Before he left, the execution creditor recovered judgment and seized the goods under his execution. The mortgagee claimed them under the mortgage, and the present issue was thereupon directed. The learned County Court Judge upon these facts decided in favour of the execution creditor, stating that he was not satisfied that the mortgage was made bona fide, and that there was no proof of any change of possession of the goods from the mortgagor to the mortgagee, the chattel mortgage having expired before the seizure.

The amount in dispute is only \$44, and it is subject to the sheriff's costs and fees.