

Co. Ct.]

O'NEILL v. SMALL.

[Co. Ct.]

paid \$440.00, with interest at 6 per cent. from the 13th August, 1877, in quarterly payments in two years, from the 13th August, 1877, the instrument should be void.

The case was tried before His Honour Judge Gowan, without a jury, at the December sittings of the County Court, at Barrie.

O'Sullivan, for the defendant, contended that the mortgage was void, because : (1) It was to run over two years and a half, in respect of payment, which was contrary to the policy of the Act ; inasmuch, as, by the Act, a mortgage is valid for only a year: *Beatty v. Fowler*, 10 U. C. R., 382. (2) This mortgage anticipated renewal, and yet renewal cannot be anticipated by a day. (3) Under sec. 6 of the Act, mortgages are expressly limited to a year, and *a fortiori* in this case, where there was present indebtedness, and no renewal was contemplated. (4) In sec. 2 there is language to show that the Legislature contemplated the money being "due or accruing due" at the time the affidavit of the mortgage was made. This is before any reference was made to a renewal, and could only refer to the mortgage money, "the sum mentioned in the mortgage."

Strathy, for the plaintiff. (1) A chattel mortgage for over a year is perfectly valid at Common Law, and this mortgage as between the parties could not be impeached. If such an instrument is rendered invalid by the Act, it can only be by express enactment or clear implication. (2) This chattel mortgage, if within the Act at all, is a mortgage within sec. 1. Everything required by that and the following sections was done, so that sec. 4 does not make the mortgage invalid. The only other section affecting the validity of such mortgage is sec. 10, but as the instrument has not run a year, that section could not make it void. (3) If it is urged that the chattel mortgage Act contemplates that no chattel mortgage shall extend over a year—and sec. 6 (which, however, does not affect such a mortgage as this) does certainly make a provision to that effect, and (see *Kough v. Price*, 27

C.P. 309), then this instrument is quite outside of the Act ; and if so, the Common Law rules as to its construction must obtain : *Patterson v. Maughan*, 39 U.C.R. 371, at p. 379.

The learned Judge thought the mortgage void, on the grounds submitted, and entered a verdict in favour of the defendant.

In the following term,

Strathy, for plaintiff, moved for a *rule nisi* to set aside the verdict for defendants, and enter a verdict for the plaintiff.

GOWAN, Co. J., in giving judgment, said in substance :—As the point was a new and important one, and as the intention is, I understand, to take the case to the Court of Appeal, it will save needless cost if I refuse a *rule nisi*, which I do, for I still think the objections taken at the trial good, and that the mortgage is void ; what struck me more particularly in the points put forward on behalf of the defendant, contending that the payment running for a period of two years the mortgage was void under the statute ; was that, as the security afforded by the mortgage under the Act "ceases to be valid" at the end of a year from its date, it could not at its inception be made security for more than a year, though a renewal of the security (from year to year it may be) is contemplated by the Act. A renewal may be effected as provided, but anticipation of that renewal is contrary to the policy of the law—it could never have been intended by the Act that a debtor should be able to lock up his chattel property from year to year or for an indefinite time. Sec. 6 relating to future advances and promissory notes restricts to a year for payment, and I quite think that the restriction in sec. 6 was to bring the security in conformity with the general terms of the Act and make it an annual security.

Rule refused.