

The
Ontario Weekly Notes

VOL. XII.

TORONTO, JUNE 22, 1917.

No. 14

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JUNE 12th, 1917.

*MORTIMER v. FESSERTON TIMBER CO. LIMITED.

Assignments and Preferences—Assignment for Benefit of Creditors—Mortgage Made to one Creditor—Agreement of Principal Creditors with Debtors that all Creditors be Paid pro Rata—Consideration—Assignments and Preferences Act, R.S.O. 1914 ch. 134—Status of Assignee—Addition of Creditor as Party-plaintiff—Mortgage Declared to Form Part of Assets for Distribution—Accounting as of Date of Agreement—Equalising of Payments.

An appeal by the defendant company from the judgment of BOYD, C., at the trial, on the 17th November, 1916, in favour of the plaintiff, the assignee for the benefit of the creditors of Richard Smith & Son, in an action to set aside a mortgage made by the defendant Richard Smith to the defendant company, dated the 1st February, 1915.

The judgment of the Chancellor declared that the plaintiff, as trustee for creditors, was entitled to hold the mortgage made to the defendant company, and that the mortgage was available for the ratable payment of all creditors of the firm of Richard Smith & Son.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, J.J.A.

G. W. Mason, for the appellant company.

Gideon Grant, for the plaintiff, respondent.

HODGINS, J.A., read a judgment in which he said that the Chancellor had found that a meeting between the debtors and

* This case and all others so marked to be reported in the Ontario Law Reports.