

MIDDLETON, J.

DECEMBER 24TH, 1914.

*MARTIN v. SHAPIRO.

Chattel Mortgage—Affidavit of Execution—Non-fulfilment of Imperative Statutory Requirement—Bills of Sale and Chattel Mortgage Act—Date of Execution not Filled in—Invalidity of Instrument.

Stated case, heard by MIDDLETON, J., in the Weekly Court.

A. C. McMaster, for the plaintiff.

W. J. McWhinney, K.C., for the defendant.

MIDDLETON, J.:—The sole question is the validity of a chattel mortgage dated the 18th May, 1914, made by one Edward Herman to the defendant. The plaintiff, as the assignee for the benefit of Herman's creditors, contends that the mortgage is invalid, as the date of execution of the mortgage is not stated in the affidavit of the attesting witness. The mortgage purports to bear date the 18th May, 1914, and the affidavit of execution is sworn on the 19th May, 1914. The day of the month has not been filled in in the printed form, although the month itself is stated.

The precise point is determined adversely to the mortgage by my brother Kelly in the case of *Cole v. Racine* (1913), 4 O.W.N. 1327. There the day of the week and the day of the month were duly stated but the year was left blank. My learned brother said (p. 1329): "This requirement of the statute is imperative, and it must be construed strictly. Failure to mention the year in which it was executed is, in my opinion, a fatal omission, and such a non-compliance with the requirements of the Act as renders the mortgage void."

The principle applicable to cases of this kind is indicated in *Parsons v. Brand* (1890), 25 Q.B.D. 110. . . .

The clause introduced into the statute requiring the date of the execution of the mortgage to be given was introduced of fixed purpose, to insure the registration of a chattel mortgage within five days from the date on which it was actually executed, and so to prevent the holding of chattel mortgages undated so that the date might be filled in and registration completed at any time the mortgagee thought it necessary for his protection. A mortgage so registered was of course invalid, but those interested

*To be reported in the Ontario Law Reports.