

evidence; and on the 8th February, 1913, the matter again came before KELLY, J., but no further evidence was submitted.

A. E. Fripp, K.C., for the plaintiff.

J. U. Vincent, K.C., for the defendant.

KELLY, J.:—On its face, the chattel mortgage was made to secure a debt of the mortgagor already incurred, and the mortgage does not purport to be made on any other consideration, or even to have given an extension of time for payment.

As far back as the beginning of February, 1911, the mortgagor was indebted to the defendant to an amount considerably in excess of \$5,000; and, on the evidence adduced for the defendant, at no time afterwards was that indebtedness less than it was in February, 1911. At the end of 1911, it was considerably more. In December, 1911, the defendant's representative at Ottawa interviewed the debtor and his brother Alfred, who acted as manager of the business, and asked for payment or security, and was told that the debtor had no money and could make no payment, and that the debtor was then insolvent.

It is true that the defendant's representative denies that it was stated to him that the debtor was insolvent; but I feel bound to accept the testimony of the debtor and his brother on that point, especially in view of the somewhat peculiar circumstances surrounding the making of the chattel mortgage, and the occurrences leading up to it.

The defendant's representative, Bissonette, in denying knowledge or notice of the debtor's insolvent condition in December, 1911, says that the debtor or his brother then told him that the debtor's stock-in-trade or assets amounted to \$12,000; and, though he was pressing for payment and knew of the debtor's inability to make any payment, and knew too that the indebtedness to the defendant, which was, in February, 1911, about \$5,400, had considerably increased in the meantime, it is not easy to give much weight to his statement that he did not ascertain the amount of the liabilities, from which, taken in conjunction with the stated value of the assets, he would have learned the true financial condition of the debtor. If we are to believe him, he did not even make inquiries about the liabilities; and I am not, under these circumstances, apart from anything else, prepared to accept his evidence that he did not know that the mortgagor was insolvent. I have no doubt that he did know, and that the mortgagor and his brother also knew, and