sums, amounting to $900, was given by the son to the father. This covered all the son's goods except about $136 worth (which afterwards brought $114 on sale). The son was then indebted to others to about the same amount (at least) as the mortgage. On the 6th December, the son assigned to the plaintiff for the benefit of creditors.

I thought at the hearing that the transaction by which a mortgage on chattels was obtained by the father (defendant) from the son (the insolvent) for $900 could not be supported so far as $500 of it was concerned, which represented the amount of the note held by the father from the son and then current. I was in doubt as to the balance of $400, which represented money paid to an execution creditor of the son, who was about to sell the goods under the execution. The father paid the money (all but $15) direct to the execution creditor, and so satisfied the judgment. The father says he made no inquiry as to other debtors or as to the son's position financially, and that he included the note in the mortgage so as to make himself safe. The son being then indebted to others to the extent of at least $800, the father—had the judgment and execution been assigned to him—could have only shared ratably with the other creditors (a preferential lien existing only as to the costs, which were small, as the judgment was by default).

The onus is by the statute on the defendant, for the son assigned for the benefit of creditors to the Sheriff within less than a month after the giving of the mortgage and the payment of the creditor: the onus to displace the intent to gain an illegal preference imputed by the statute 10 Edw. VII. ch. 64, sec. 5, sub-sec. 4. Upon the meagre evidence in this case, I am not able to find that there existed in either father or son a bonâ fide belief that the advance of $400 (all paid to one creditor) would enable the debtor to continue his business and to pay all his debts in full. The son knew his insolvent condition, and the father apparently asked no questions, and took the security with an eye to his own security rather than any possible prosecution of the business. The money paid by the defendant was not in the nature of an advance of money, but rather in the nature of a preferential payment to the execution creditor, which was within the mischief of the Ontario Act.

Judgment will be to set aside the chattel mortgage, and the defendant is to account to the assignee for the goods sold under it of which he may have received the proceeds. The $500 held pending this action should be paid over to the assignee for distribution, and the transactions of the defendant with the goods