

had accordingly. The Judge found that the chattel mortgage was void, under the provisions of the Bills of Sale and Chattel Mortgage Act, against creditors of the mortgagors, and awarded to the plaintiffs their costs of the action.

The evidence supports the finding of the trial Judge: the mortgagee took the wrong kind of a mortgage, and must now take the consequences which the Act attaches.

After this action was brought, the plaintiffs' claim was not for the amounts owed to him upon the Division Court judgments only—it was for the costs of this action also; and the payments which were made were but part payments of a greater claim. It was true that the costs did not become a debt until adjudged to the plaintiffs; but, when adjudged, why should an invalid mortgage stand in the way of enforcing payment of them? It could hardly be in the interests of any of the parties to go through the form of another trial to reach a conclusion already reached between the same parties. If the mortgage was invalid against creditors when the action was tried, it is still equally invalid, and should not be permitted to stand in the way of enforcement of the balance of the plaintiffs' claim in this action, now in the form of a judgment of this Court.

The appeal should be dismissed, but without costs—not because of any merits of the appellants, who had been unduly litigious, but because of the demerits of the respondents in taking unnecessary, unusual, and costly steps to enforce rights when they could have been better enforced in the usual speedy and inexpensive way.

RIDDELL, J., for reasons stated in writing, agreed that the appeal be dismissed without costs.

LENNOX and ROSE, JJ., agreed in the result.

*Appeal dismissed without costs.*