MACMAHON, J. MARCH 15TH, 1909.

TRIAL.

BELL v. ROBINSON.

Bankruptcy and Insolvency — Chattel Mortgage Given by Insolvent to Creditor—Absence of Knowledge of Insolvency —Preference—Validity as against Execution Creditors.

Trial of an interpleader issue in which the plaintiffs affirmed and the defendant denied that certain goods, chattels, and effects in a certain shop in the occupation of Elizabeth Murphy, trading alone under the firm name of John Murphy & Co., in the town of North Bay, seized in execution by the sheriff of the district of Nipissing, under a writ of fieri facias issued in an action at the suit of the plaintiffs against the said Elizabeth Murphy, were, at the time of the said seizure, exigible under the said execution as against the defendant.

G. H. Kilmer, K.C., for plaintiffs.

J. A. Macintosh, for defendant.

MACMAHON, J:—Elizabeth Murphy carried on business at North Bay as John Murphy & Co., and on 3rd October she was indebted to the defendant, James Robinson, who is a wholesale boot and shoe dealer in Montreal, in the sum of $4,012 for goods sold and delivered to her. On that day the defendant was in North Bay, and he took from John Murphy (the husband of Elizabeth Murphy), who was manager of Elizabeth Murphy's business, a chattel mortgage for the amount named, payable in 6 months from the date of the mortgage. John Murphy held a power of attorney from his wife, but it was exclusively confined to the banking business, making and indorsing promissory notes and bills of exchange, connected with her business, at the Bank of Ottawa in North Bay. At that time he had no authority from her to give a chattel mortgage over the stock in trade of her business.

Robinson received from the manager of the business a statutory declaration dated 17th September, 1908, shewing that the liabilities of the business were $2,932.64, and that the assets, including the stock in trade and the fixtures and repair shop, which belonged to the business, amounted to