

There does not seem anything objectionable in paragraph 7, as it informs plaintiff of defendant's contention. But the other two paragraphs cannot stand. There is no way in which the relief asked for in them can be granted to Charlton, who is not a party to the action. If defendant has a power of attorney he could bring an action in Charlton's name, or if he had an assignment of the cause of action he could sue in that capacity. Here, however, he does not set up either position. On the contrary, he asserts that Charlton is the person entitled to the bonds and the one against whom plaintiff should proceed to recover them. Since the argument his counsel has produced a telegram from Charlton, dated 19th inst., in which he speaks of these as "my bonds" and asks to have them sent to him. These paragraphs, 11 and 12, will therefore be struck out or amended with leave to defendant to amend in a week, as he may be advised—and plaintiff to have further time to reply if desired.

The costs of this motion will be to plaintiff in the cause.

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HON. MR. JUSTICE KELLY.

MAY 22ND, 1913.

COLE v. RACINE.

4 O. W. N. 1327.

*Assignments and Preferences Act—Chattel Mortgage—Knowledge of Insolvency on Part of Mortgagee—Evidence—Intention to Defraud—Defective affidavit of Execution—Necessity for Precision—Absence of Date—Costs.*

KELLY, J., set aside a chattel mortgage upon certain stock-in-trade of an insolvent at the instance of the assignee for the benefit of creditors holding that the evidence established that on the date it was given it was known to the mortgagee that the mortgagor was insolvent and that the same was being given in fraud of the other creditors of the mortgagor, and that the mortgage was void upon the further ground that the affidavit of the attesting witness was fatally defective in that it stated that the mortgage was executed "on Tuesday, the 9th day of January one thousand nine hundred and . . . ."

Action by plaintiff as assignee of the estate of Alfred St. Laurent, an insolvent, to set aside as fraudulent against creditors a chattel mortgage made by Arthur St. Laurent to defendant on January 2nd, 1912.

When the chattel mortgage was made Arthur St. Laurent carried on business as a retail merchant in Ottawa.