

to be grown within one year from the date of such mortgage, and shall have the same effect in every respect as if such growing crop or crops to be grown were existing at the date of such mortgage.

The sheriff seized the crop under defendant's execution and the mortgagee claimed it.

*D. A. Macdonald* for the defendant: The mortgage is invalid because (1) it is not under seal; and (2) the word "her," which should have been written at the end of the affidavit of *bond fides*, is omitted.

*James*, for the plaintiff, in reply

*Held*: (1) The first objection must be overruled. "It is now firmly settled that there may be a mortgage of chattels without deed": *Patterson v. Maughan*, 39 U.C.R. 379; *Halpenny v. Pennock*, 33 U.C.R. 229; *Flory v. Denny*, 7 Ex. 581; and *Reeves v. Capper*, 5 Bing. N.C. 136.

(2) The second objection must also be overruled. In the copy of the mortgage kept by the plaintiff the word "her" was duly inserted, and "taking into consideration all the other circumstances of this case, as well as the fact that there is nothing to show the least suspicion of fraud or collusion between the parties, I cannot hold that a chattel mortgage given for a *bond fide* consideration and valid in every other respect should be declared void on account of such omissions": *Ontario Bank v. Miner*, Man. Rep. temp. Wood, 167, approved; *Davis v. Wickson*, 1 O.R. 369, and *Re Andrews*, 2 O. App. 24, not followed.

In regard to the mortgage itself, the points to determine were whether the crop, which did not exist when the writ of execution was placed in the sheriff's hands, became bound by that writ when it came into existence; or whether the crop, springing into existence after the chattel mortgage was executed and being aimed at and specially described in the mortgage, was primarily subject to the rights of the mortgagee.

*Held*: (1) There was no doubt that the crop, though not *in esse* at the time the writ was placed in the sheriff's hands, would in coming into existence have been bound by the writ unless some other right should intervene, as in the case of any after-acquired chattels.

(2) The execution debtor having given a chattel mortgage on the crop to be grown raised said crop subject to the chattel mortgage, and when the said crop came into existence the said Elizabeth Huntley had only the equity of redemption therein, the property being in the mortgagee; therefore such equity of redemption was the only thing which was seizable under the sheriff's execution. A different conclusion would, of course, be arrived at if the chattel mortgage were fraudulent and the mortgagee was collusively assisting the mortgagor in defeating an execution against him, but no such question has been raised here.

Verdict for the plaintiff.