

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

Gideon Grant, for the appellants.

W. S. Brewster, K.C. for the plaintiffs, respondents.

MEREDITH, C.J.C.P., read a judgment, in which he said that the plaintiffs recovered two judgments, for \$100 each, against the defendant company in a Division Court; but, instead of proceeding, in the ordinary manner, to enforce these judgments in that Court, and without as much as issuing execution there, they began this action, in the Supreme Court of Ontario, against their judgment debtors and the defendant Taylor, to set aside a chattel mortgage made by them to him—in order that the plaintiffs might make the amounts of their judgments out of the mortgaged goods of the defendant company.

The usual and the proper course in such a case is to seize the mortgaged goods under execution in the Division Court, and, in case of a claim to them being made by the mortgagee, to litigate that claim in the Division Court in interpleader proceedings.

The plaintiffs were perhaps within their strict rights in beginning another action for the purpose of determining whether the mortgage was invalid against creditors of the mortgagors under the Statute of Elizabeth or under the Bills of Sale and Chattel Mortgage Act; but, if successful in such an action, should have no more costs than would have been allowed to them if they had taken the simpler and cheaper course: *Goldsmith v. Russell* (1855), 5 DeG. M. & G. 547; *Reese River Silver Mining Co. v. Atwell* (1869), L.R. 7 Eq. 347, 350, 352.

Some time after this action was brought, the judgment debtors paid to the plaintiffs and the plaintiffs accepted payment of the amounts of both Division Court judgments; and steps were thereupon taken to have the question of the costs of this action disposed of at Chambers; but, as the parties were not able to agree upon the facts, the Master in Chambers referred the matter to the trial Judge; and the action was brought on for trial in the usual way.

The defendants' contention then, and throughout, was, that the chattel mortgage was valid, and therefore they should not pay any of the costs of this action. The plaintiffs' contention throughout was, that the mortgage was invalid against creditors, and therefore they should have all the costs of this action.

The trial Judge, finding the parties at issue on the question of costs and the means of recovering such costs only, thought there was no course open to him but to try the action, and the trial was