

had threatened to do so when the chattel mortgage was given. This action was commenced on the 17th March, 1900.

J. P. Mabee, K.C., for plaintiff.

G. G. McPherson, K.C., for defendant.

The judgment of the Court (MEREDITH, C.J., LOUNT, J.) was delivered by

MEREDITH, C.J.—The onus, if insolvency of Wilson existed or was impending, was on the respondent to rebut the *prima facie* presumption of the intent to prefer which arises under sub-sec. 3 of sec. 2 of R. S. O. ch. 147.

The Chancellor was of opinion that this onus had been satisfied, and in that conclusion I agree.

Assuming that it was shewn that Wilson, when the chattel mortgage was given, was in insolvent circumstances,—for that is, I think, in some doubt on the evidence,—I agree in the findings of the Chancellor that this was not known to the respondent, and the proper conclusion upon the evidence is that reached by the Chancellor, that the chattel mortgage was made and taken in good faith and only for the purpose of securing the payment of the part of the arrears of interest which was secured by it, and for which it was believed by both parties to the transaction the respondent had an immediate right to distrain on the goods and chattels embraced in the chattel mortgage, and in order to relieve Wilson from the liability to have them distrained.

It does not appear to have been called to the attention of the Chancellor that the interest due was post diem interest, and that there was therefore no right to distrain for it, but that is, I think, unimportant, and does not affect the correctness of the conclusion that the *prima facie* presumption was rebutted and that the intent was not to prefer contrary to the provisions of the statute.

The fact that, when the chattel mortgage was given, the claim which the plaintiff was making was not to establish any debt or money liability of Wilson to her, but to have it declared that Wilson was trustee for her of certain land, or in the alternative to have it declared that she was entitled to a lien on this land for \$400, is not unimportant in determining the question of intent in favour of the respondent.

The testimony of Wilson was relied on as establishing that the chattel mortgage was given for the purpose of protecting Wilson's chattel property against the claim which was being made by the appellant against him, but it is not very satisfactory, and, as against the positive contradiction of the respondent, is quite insufficient to justify a finding that the chattel mortgage was given with that intent.