

Full Court.]

ROBINSON v. EMPEY.

[June 15.

Bill of sale—Sale of business as a going concern—Chattel mortgage by a new firm covering book debts due to it—Whether debts due old firm included—Creditors' Trust Deed' Act, 1901.

Appeal from HUNTER, C. J., at the trial.

The firm of Vaughan & Cook sold their grocery business including all their stock in trade and book debts to Hamon & Bisson who three days afterwards gave a chattel mortgage to defendant covering the stock in trade of the grocery business and also all book debts due to Hamon & Bisson in the business carried on by them as grocers. Hamon & Bisson assigned to defendant for the benefit of creditors who afterwards removed defendant and appointed plaintiff in his place. The day after his removal defendant paid himself \$1,245.00 on account of his mortgage claim, being proceeds of book debts collected by him and originally due to the firm of Vaughan & Cook. Plaintiff sued to set aside the chattel mortgage as being a fraudulent preference and at the trial the Chief Justice held that the mortgage was good but ordered defendant to pay the \$1,245.00 into court for distribution among creditors as he held the Vaughan & Cook book debts were not covered by the description in the chattel mortgage.

Held, on appeal that the said book debts were covered by the chattel mortgage.

Quære, has an assignee a right to pay himself without consulting the other creditors.

J. A. Macdonald, for appellant. *MacNeill*, K.C., for respondent.

Full Court.]

BARRETT v. ELLIOTT

[July 29.

Contract for fire insurance—"Valid in Canada"—Meaning of policy in company not licensed in Canada—Premium paid to—R.S. Canada, 1886, c. 124, s. 4.

The plaintiff who was the proprietor of a hotel in White Horse in the Yukon Territory entered into an agreement with defendants whereby they agreed to procure fire insurance on the hotel in some office valid in Canada. Plaintiff paid part of the premium in advance and the balance when he received the policies of insurance which was for one year. The companies in which the insurance was effected were not licensed in Canada and after the expiration of the year plaintiff sued for a return of the premiums paid.

Held, that the plaintiff had contracted for insurance in a company licensed in Canada and that the premiums paid could be recovered back as upon a failure of consideration.

Judgment of DRAKE, J., reversed.

F. Higgins, for appellant. *Helmcken*, K.C., and *Belysa*, K.C., for respondents.