

H. M. Mowat, K.C., for the appellant.

T. N. Phelan, for the defendant, respondent.

RIDDELL, J., delivering the judgment of the Court, said that one Williamson had given a chattel mortgage upon some horses; the mortgagee seized on non-payment; Williamson thereupon borrowed \$400 from one Breckon, and gave him a chattel mortgage for \$410 upon his eight horses, five waggons, and some harness, on the 9th August, 1913. Williamson got into straits again in 1914, and made an arrangement with the defendant (Buckner) whereby, for valuable consideration, the defendant got three of the horses. Breckon thereupon assigned the chattel mortgage to the plaintiff, who sued in detinue for the three horses and also for damages, etc.

Some time in April, 1914, Williamson had an account against Breckon: Breckon asked him "to get these accounts straightened out;" Williamson wanted to "get the mortgage squared off," and told Breckon so. A statement was made up shewing Williamson's account slightly in excess of the amount of the chattel mortgage, and, "as the result of the figuring" by and between the mortgagor and mortgagee, Williamson says, "the mortgage was paid." Breckon admitted that he called on Williamson for his account, that he asked him to get the accounts straightened out; but he denied that the account of Williamson was arranged to go on any particular advance. There were two independent witnesses who said that what was said by one or other of the parties at this meeting was, "This straightens us out," or words to that effect.

The County Court Judge did not discredit these witnesses, and RIDDELL, J., saw no reason for doing so. It was true that the Judge said: "No appropriation of the credits has been made by or on behalf of Breckon;" but it was not necessary that Breckon should have expressly made an appropriation. If Williamson set his account off against the chattel mortgage, and this was assented to by the mortgagee, no actual appropriation on the part of Breckon was necessary. The position of the plaintiff was no higher than that of Breckon. When one buys a chattel mortgage, he takes what his assignor can give him.

The chattel mortgage was paid off and satisfied, and so came to an end; and the judgment of the Court below was right.

*Appeal dismissed with costs.*