

trial Court; they were forced to come to this Court to obtain their legal rights; and they should have the costs of the appeal.

As to costs below, the plaintiff should have sued in a Division Court; but the defendants should not have set up the untenable defence they did. The plaintiff should have Division Court costs of the action and trial, with no set-off in favour of the defendants.

*Appeal allowed.*

SECOND DIVISIONAL COURT.

OCTOBER 31ST, 1919.

\*PETINATO v. SWIFT CANADIAN CO. LIMITED.

*Insurance (Fire)—Stock of Goods Destroyed—Insurance Moneys Attached by Judgment Creditors of Assured—Claim of Chattel Mortgagee—Chattel Mortgage Registered without Affidavit of Execution—Invalidity as against Creditors—Bills of Sale and Chattel Mortgage Act, secs. 5, 7—Ownership of Goods—Covenant to Insure for Benefit of Mortgagee—Equitable Assignment—Issue Found in Favour of Chattel Mortgagee.*

Appeal by the plaintiff (claimant) in an issue from the judgment of KELLY, J., after the trial, finding the issue in favour of the defendants (judgment creditors).

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

R. McKay, K.C., for the appellant.

H. E. Stone, for the defendants, respondents.

RIDDELL, J., read a judgment in which he said that the appellant sold his stock in trade to one Musolino for \$3,700; Musolino paid \$1,000 and made a chattel mortgage on the stock for \$1,500. The stock was insured; a fire occurred; Musolino assigned the insurance moneys to the appellant. The amount payable was fixed at \$1,200; it was claimed by the respondents as judgment creditors of Musolino, and also by the appellant. The issue was decided by the trial Judge in favour of the respondents. The chattel mortgage had no affidavit of execution, and so was fatally defective as against creditors. Section 7 of the Bills of Sale and Chattel Mortgage Act, R.S.O. 1914 ch. 135, prevented the appellant from successfully asserting a right to the goods insured. Kelly, J., was of opinion that the contention that the appellant's right to the insurance moneys was superior to his right to the