

with costs of appeal to defendants and costs of last trial to abide the event.

Hearst & McKay, Sault Ste. Marie, solicitors for plaintiffs.

Hamilton, Elliott, & Irving, Sault Ste. Marie, solicitors for defendants.

APRIL 11TH, 1902.

C. A.

FISHER v. BRADSHAW.

*Chattel Mortgage—Prior Agreement to Give—If Valid, Mortgagee may claim under it notwithstanding Defect otherwise Fatal in Mortgage.*

Appeal by defendants from judgment of BOYD, C. (2 O. L. R. 128), in favour of plaintiff in an interpleader issue. The goods in question were seized under an execution upon a judgment recovered by defendants Bradshaw & Co., against Benor, Taylor, & Co., merchants, Alliston. The other defendants are also execution creditors. The plaintiff claims under a chattel mortgage dated 23rd January, 1901, executed by Benor, Taylor, & Co., pursuant to agreement dated 1st June, 1899, which was given pursuant to R. S. O. ch. 148, sec. 11, and duly registered. The mortgage was afterwards registered, and the Chancellor held that the Act did not operate to merge the registered agreement in the subsequently executed and registered mortgage, and therefore, as the affidavit of bona fides, made seven months before in the agreement, was regular, a defective affidavit of bona fides in the mortgage did not vitiate it. The latter affidavit did not state that the mortgagor "is justly and truly indebted" in the sum of \$2,500.

G. C. Gibbons, K.C., A. J. Russell Snow, and L. F. Stephens, Hamilton, for defendants.

W. A. J. Bell, Alliston, for plaintiff.

Moss, J.A.—Under sec. 11 of the Bills of Sale and Chattel Mortgage Act the plaintiff could have maintained under the agreement his claim to the goods, if before the subsequent execution of the chattel mortgage the seizure had been made. Absolute good faith and a bona fide advance having been established by the evidence and found by the Chancellor, the creditors can claim no higher rights in respect of the property covered by the agreement than can their debtor. The object of 59 Vict. ch. 34, from which comes sec. 11 and following sections, was to put an end to secret agreements. By the registration of the agreement in