

1884 DOUGALD McCALL AND WILLIAM }  
 \* Dec. 6. BLACKLEY (PLAINTIFFS)..... } APPELLANTS;

AND

1885 RICHARD WOLFF, FREDERIC }  
 \* May 12. WRAY, S. F. MCKINNON, W. C. }  
 PROCTOR, THE BANK OF MONT- } RESPONDENTS.  
 REAL JAMES D. TAIT AND ED- }  
 WARD BURCH (DEFENDANTS)..... }

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR  
 MANITOBA.

*Interpleader—Chattel Mortgage—Insufficient description of goods—  
 Con. Stats. Man. ch. 49 sec. 5.*

The Consolidated Statutes of Manitoba Ch. 49 sec. 5, enacts as follows; All the instruments mentioned in this act, whether for the sale, or mortgage of goods and chattels, shall contain such a full and sufficient description thereof that the same may be thereby readily and easily known and distinguished.

Held, Strong and Henry JJ. dissenting, that where goods, in a chattle mortgage, were described as "all and singular the goods, "chattels, furniture, and household stuff hereinafter particularly "mentioned and described, and particularly mentioned and "described in the schedule hereto annexed marked A; all of "which goods and chattels are now situate lying and being &c." (particularly describing the premises), without stating that such goods were all the goods on the said premises, there was not a full and sufficient description within the meaning of the above enactment and the mortgage was void as against execution creditors.

**APPEAL** from the Court of Queen's Bench, Manitoba, refusing to set aside a judgment of the Chief Justice in Chambers upon an interpleader issue.

The facts in the case are briefly as follows :

One Louisa Black was indebted to the plaintiff in the sum of \$4,000 or thereabouts, and to secure the debt gave the plaintiffs a chattel mortgage on her stock-in-trade. In such mortgage the goods were described as

\*PRESENT—Sir W. J. Ritchie C.J. and Strong, Fournier, Henry and Taschereau JJ.

“All and singular the goods, chattels, furniture and household stuff hereinafter particularly mentioned and described, and particularly mentioned and described in the schedule hereunto annexed marked ‘A,’ all of which goods and chattels are now situate, lying and being on the premises situate in a building on the east side of Main street, in the said city of Winnipeg, on the Grace Church property, and now being occupied by the said Louisa Black as a millinery store and dwelling, which said building may be more particularly known as number two hundred and ninety-one (291) Main street, in the said city of Winnipeg.”

The defendants were also creditors of the said Louisa Black, and having obtained judgment on their respective debts issued executions under which the sheriff seized the goods on the said premises, No. 291 Main street. The plaintiffs claimed that the goods seized belonged to them under the said chattel mortgage, and the title to them was tried before the Chief Justice of the Court of Queen’s Bench in Chambers, where judgment was given for the defendants, the Chief Justice holding the chattel mortgage void, both under the statute of Elizabeth and under ch. 49 of the Consolidated Statutes of Manitoba. The Court of Queen’s Bench refused to set this judgment aside, and the plaintiffs then appealed to the Supreme Court of Canada.

*Robinson Q. C.* for appellants.

*Lash Q. C.* for respondents.

Sir W. J. RITCHIE C.J.—This is an interpleader issue. The plaintiffs claim the goods, &c., under a chattel mortgage made by Louisa Black, the execution debtor, to the plaintiffs, dated December 15th, 1882, and duly filed in the proper office. The defendants are subsequent execution creditors and claim the goods, &c., under their executions, and, among other things, contended that the mortgage was not executed in good faith and

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for the express purpose of securing the money due or accruing due to the plaintiffs, but for the purpose of protecting the goods against the creditors of the mortgagor or preventing the creditors of the mortgagor from obtaining payment of any claim against her, and that the goods are insufficiently described, and is therefore void as against the defendants. This issue has been directed to be tried upon the application of the sheriff of the eastern judicial district of Manitoba. The issue was tried before Chief Justice Wallbridge, and judgment was rendered by him for the defendants on 19th February, 1883. On 6th June, 1883, the plaintiffs obtained a rule *nisi* from the Court of Queen's Bench to set aside the verdict and enter a verdict for the plaintiffs. In following Trinity Term the said court discharged the rule *nisi* and made the learned Chief Justice's order barring the plaintiffs' claim to the goods absolute with costs.

The plaintiffs now appeal from the said judgment of the Court of Queen's Bench.

The learned Chief Justice who heard this matter in first instance, and the full court on motion to set aside the decision of the Chief Justice, concurred in the holding that the description of the goods, with the exception of a very few insignificant items, does not contain the sufficient and full description of the goods, that they may be easily and readily distinguished, and on that account is void. If it were necessary to distinguish the items which comply with that section they would be found few in number and insignificant in value, and therefore they held the chattel mortgage void.

By the 49 Con. Stats. Man. 1880, sec. 5: "All the instruments mentioned in this Act, whether for the sale or mortgage of goods and chattels, shall contain such sufficient and full description thereof that the same may be thereby readily and easily known and distinguished."

If from the description given, the articles cannot be

readily and easily known and distinguished, it is clear the statute has not been complied with. I do not think the legislature intended to confine this description to the parties by whom it was prepared as between themselves alone, but the description was to enable the property to be identified as against third parties, creditors or others claiming an interest in the property; this need not be such a description as that with the deed in hand without other enquiry the property could be identified, but there must, in my opinion, be such material on the face of the mortgage as would indicate how the property may be identified if proper inquiries are instituted, as for instance, "all the property now in a certain shop, &c."

Is the property then in this case described with sufficient certainty to enable it to be distinguished and identified?

It may have been the intention to convey all the goods in the store, but the mortgage does not say so, nor is there any evidence to show the goods named in the schedule where the only goods of that description in the store or what were the exact goods in the store. The description is:

[The learned Chief Justice then read the description of the goods (1)].

If we take the largest items in the schedule I can discover nothing in the description to guide any one in knowing or distinguishing them. In schedule "A" are items especially noticeable amounting to \$8,455.

When we come to examine the evidence in the case the insufficiency of the description would seem to be made very apparent.

Doritty, the agent for the claimants, who obtained the mortgage says:—

Item one (of chattel mortgage) 22 doz. Spanish net. means 22 doz. yards Spanish net; the price shows it is per doz. yards; the next item, 20 Spanish net, 40 \$8; this means 20 yards Spanish net; I know by the price this means yards, and not dozen yards; it would

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require a knowledge of business to understand the quantities and qualities of the articles ; item 3 is, 37 Spanish net, 65c. (in the column of price), means 37 yards of Spanish net at 65c. per yard ; the schedule is such as would be sufficient to a business man having a knowledge of that description of goods ; it would be difficult to a person not having that knowledge ; the mortgagor would know it and the mortgagees would know it ; I think Mr. White would understand it ; but one not understanding that line, it might be difficult for such a person to understand it ; it was prepared by my going to the place and taking notes of the stock ; I got some of the prices from Mrs. Black ; the annexed list is in my writing ; Mrs. Black assisted me as to prices, the prices in wholesale ; I got that list without her concurrence, and the prices she gave me on my asking for them.

And again on cross examination :

Description of chattel mortgage. "I made the list from memory, I had taken in Mrs. Black's store from time to time ; I did not measure any of the pieces in the store, and no one else did for the purposes of this schedule ; the lengths I got from looking at the ends ; they generally run from 9 to 18 yards to the end ; I counted the ends by my eye ; I ran my eye over the lot in my mind ; ribbons not all taken at one time ; I may have counted in some twice or may have left out some pieces ; the quantities are estimates not measurements and number of yards also and quantity may be more or less ; I didn't think I was a great deal out in my estimate ; the prices were put down when I was in the store : I put them down in the warehouse ; the retail prices in figures and the cost in characters, and the reverse sometimes ; I don't know how the ribbons were marked. The first item on page three, 22 Spanish net, means 22 yards, not 22 dozen yards."

Mr. White, referred to by this witness, is called, and he says :—

Looks at description of the goods in chattel mortgage ; it does not contain such sufficient and full description of the goods that the same may be thereby readily known and distinguished. He looks at the mortgage—first item, 250 yards ribbon, 10c., \$25 ; cannot tell what colour or quantity, or quality ; the quality and width affect the price, colours does not ; the price per yard would not show the width, quality or quantity, or colour ; ribbons have their individual number, a number which indicates its width, and by its colour is plain ; this is the general character of all the items on page one ; only two lines in writing the articles, of which there are 30, must be ascertained by evidence outside the bill of sale ; first item on page three, this might mean 22 yards or 22 dozen yards ; there are some Spanish nets at the price of \$2.75 per yard, and also \$2.75 per dozen

yards, owing to width and quality, 7 on page two; I know what tissue is; I could not pick out the tissue in the store from the description given; on page two, the last item, this might be yards, it is a matter of judgment from prices, the quantity would be too large for pieces; it is set down at 50, and may be yards or pieces, I should think yards from the nature of her business; the articles should be numbered; this applies to all the articles described in the schedules excepting some on the last page; the last few items are not in my line, being show case, mirror, fixtures and carpet, shop fixtures and stands; the schedule is generally wanting in information; that the description does not give such description by which they can be easily known, they could not be priced out in a store.

Cross-examined by Mr. Patterson.—I understand the blank lines on the first page to indicate goods of the same character in the written words above them; this does not show what kind, quality or colour; and the first six lines on the second page, and four lines on the third page, under the word “crimp,” that means crimp crape. The item on third page (8 blank), under “braided dresses,” I don’t think that means “eight black braided dresses,” for the reason that Mrs. Black’s business would not enable her to keep those 8 and 2 (= 10) on hand; also from my knowledge of her stock. I saw coloured braided dresses there; I think the schedule means them. The dresses are not braided, it is the trimmings. Three blank lines more underlines; I can tell whether coloured, black or white. I don’t know the quantity in that store on fourth page, and on all the other places three blank lines generally they would indicate similar articles to the one named above. On page two, 85 plush and satin, I would, knowing the business, know it meant yards, but a stranger would not; the place where yards is written is of assistance to me in interpreting its meaning. On page three, item of cream silk, wht, snow flake and spt net, \$300 too indefinite to distinguish them. 120 yards gossamer silk if no other than I did tell it, but not of more than 120 yards, would put to eight or ten pieces; birds, ornaments—twenty birds, \$225—that may mean birds from 20c. to \$10 each; each stand bore its own box, is numbered, and each has its own number, \$225.

This is all the evidence that bears on the description of the goods, and I cannot under this evidence say the judges in the court below were wrong in holding that there had not been a compliance with section 5, ch. 49 of the Consolidated Statutes, Manitoba. As between the parties, difficulty may not be likely to arise, but the statute is to protect creditors and subsequent purchas-

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ers from uncertainty in regard to identity. If so, how can it be said that the description in this schedule, if as to many of the articles a description it can be called, was sufficient and full, that the articles proposed to be conveyed could thereby be readily and easily distinguished. The statute is a wise one and should be so construed so as to make it effectual.

STRONG J.—I am of opinion that the evidence of pressure was amply sufficient to establish that the security impeached was not given by way of voluntary preference, such as the Con. Statutes of Manitoba, ch. 37 sec. 96, avoids. That enactment is a transcript of that on the same subject contained in R. S. Ontario, ch. 118, sec. 2, and numerous cases have decided that a security of this kind obtained by a creditor as the result of pressure is not an illegal preference within the provision in question.

The objection that the goods are not sufficiently described, that is, that the mortgage did not contain such a sufficient and full description of the chattels mortgaged that the same might be readily and easily known thereby as required by the 5th sec. of the Chattel Mortgage Act of Manitoba, also fails. Numerous cases decided in Ontario under a statute precisely similar (1) have held such a description sufficient, and were I to hold otherwise I should overrule this long line of cases, which I am not prepared to do. Moreover, even if the question was *res integra*, I should not be disposed to consider this an insufficient description, for it seems to me that giving the statute a fair and reasonable construction it is here sufficiently complied with, and that to hold otherwise would be in effect to

(1) *Harris v. Commercial Bank*, 25 U. C. C. P. 435; *Bertram v. 16 U. C. R. 437*; *Ross v. Conger*, 27 U. C. C. P. 377; *Re 14 U. C. R. 525*; *Fraser v. Bank Thirkell Perrin v. Wood*, 21 Gr. 492; *Mathers v. Lynch*, 28 U. C. Q. B. 354; *Wilson v. Kerr*, 17 U. C. C. C. P. 303; *Mason v. McDonald*, Q. B. 168;

make it impracticable to give an effectual chattel mortgage upon property of this description, a stock of goods contained in a shop or store, the business of which was actually going on. For if this description does not suffice it would be in effect to require that in all such cases there must be an actual change of possession which would of course compel the stoppage of the business.

The American authorities decided on enactments corresponding in terms with that under consideration, sustain the view that the goods were here sufficiently described, and that it is not essential that they should be set forth with such particularity as to be capable of being identified by the written description in the mortgage without aid from any parol or extrinsic evidence, nor need the description be such as to enable a stranger to identify the articles without any aid from other evidence (1). In any case, even when the description is of the most minute kind, such assistance must be sought from extrinsic evidence to identify and ascertain the property comprised in the mortgage, and therefore it has been held in the American courts that it is sufficient that the mortgage points out the subject matter of it so that "a third person by its aid, together with the aid of such enquiries as the instrument itself suggests, may identify the property covered." When these conditions are complied with I am of opinion that the deed may be said to embrace a description of the articles sufficiently full and certain to enable them to be readily and easily distinguished. This is, I think, what was done in the present instance.

The decision of the court below should be reversed and the *rule nisi* discharged.

Fournier and Taschereau JJ. concurred with the Chief Justice that the appeal should be dismissed with costs.

(1) *Harding v. Coburn*, 12 Met. *Snyder*, 34 Mich. 60, per Cooley. *calf*, 333 per Dewey J.; *Willey v. C.J.*

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HENRY J.—I think the statute would be sufficiently satisfied by a general description such as “all the goods” in a certain store, properly locating it, and a detailed description of them is in such a case altogether unnecessary, because the particular store being ascertained the description covers all the goods with as much certainty as if each article were specified and described. If, however, to a general description is added a detailed one by description of the articles and quantities of different kinds of goods, and that there are more goods of that particular kind than mentioned, and from which the others could not be distinguished, none at all, I take it, would be covered either by the general description or the detailed one. In the absence of such a difficulty to ascertain what is meant, or which particular kind is meant, I think the transfer would be good. For instance, a man gives all the horses in his stable and all the cows, and he gives five calves, and there are found to be ten there, it would not cover the five because you could not tell which five of the ten was meant to transfer, and so with these ribbons. The transfer says all the clothing that is there, and then gives the number of yards. I think in such a case that would be covered by a bill of sale, but where a difficulty would arise in selecting out of larger quantities specific articles a reduced quantity or number, then I take it none would pass. A mistake in the description, however, of certain goods would not invalidate the sale of the whole, which, if it had not been for that particular description, would have been good. I think under the circumstances, then, that the bill of sale was good to the extent of the goods that were in that building, that would not be subject of difficulty in ascertaining, as I before stated. I think the appeal should be allowed.

*Appeal dismissed with costs.*

Solicitors for appellants: *Paterson, Baker & MacLean*  
 Solicitors for respondents *Wolff & Co.; Ewart, Bodwell.*

*& Wilson.*

Solicitors for respondents McKinnon & Proctor:  
*Bain, Blanchard & Mulock.*

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