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*May 19, 20.

*June 6.

A. R. WILLIAMS (PLAINTIFF).....APPELLANT;

AND

E. LEONARD & SONS (DEFENDANTS)...RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Chattel mortgage—Description—Bills of Sale Act—R. S. O.* [1887] *c.* 125 *—Appeal—Order to amend pleadings—Interference with—Debtor and creditor—Purchase by creditor—Consideration—Existing debt.*

In a chattel mortgage the goods conveyed were described as follows: "All of which said goods and chattels are now the property of the said mortgagor and are situate in and upon the premises of the London Machine Tool Co. (describing the premises), on the north side of King Street, in the City of London;" and in a schedule referred to in the mortgage was this additional description: "And all machines * * * in course of construction or which shall hereafter be in course of construction or completed while any of the moneys hereby secured are unpaid, being in or upon the premises now occupied by the mortgagor * * * or which are now or shall be on any other premises in the said City of London."

*Held*, affirming the decision of the Court of Appeal, that the description in the schedule could not extend to goods wholly manufactured on premises other than those described in the mortgage, and if it could the description was not sufficient within the meaning of the Bills of Sale Act (R. S. O. [1887] c. 125) to cover machines so manufactured.

The Supreme Court will not interfere on appeal with an order made by a provincial court granting leave to amend the pleadings, such orders being a matter of procedure within the discretion of the court below.

A purchaser of goods from the maker of a chattel mortgage in consideration of the discharge of a pre-existing debt is a purchaser for valuable consideration within sec. 5 of the Bills of Sale Act.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment of the Divisional Court (2) in favour of the defendants.

*PRESENT:—Sir Henry Strong C.J. and Taschereau, Sedgewick, King and Girouard JJ.

(1) 17 Ont. P. R. 73.

(2) 16 Ont.P. R. 544.

The material facts are sufficiently stated in the above head-note and the judgment of the court.

*McEvoy* for the appellant. The description in the mortgage was sufficient to cover the machine claimed by the appellant. *McCall* v. *Wolff* (1); *Horsfall* v. *Boisseau* (2).

The respondents were not purchasers in good faith, having merely taken the machine and credited the price in their debtor's account. They parted with no value and their position was the same after the alleged purchase as before. *Tourville* v. *Naish* (3); *Cary* v. *White* (4); *Eyre* v. *Burmester* (5); and see *Forristal* v. *McDonald* (6).

*Gibbons* Q. C. for the respondents, referred to *Fraser* v. *The Bank of Toronto* (7) on the question of sufficiency of description and on the question of purchase to *Taylor* v. *Blakelock* (8).

The judgment of the court was delivered by:

THE CHIEF JUSTICE.—The appellant (plaintiff in the court below) brought this action to recover a machine called a bolt cutter, of the value of some $350. By his statement of claim the appellant asserted a double title, claiming first under a purchase from one William Yates, a manufacturer carrying on business under the name of the "London Machine Tool Company," and, secondly, under a chattel mortgage which the appellant alleged to have been duly registered, and under which he asserted that he had (by his agent James Burns) taken possession before the delivery of the machine in question to the respondents.

The respondents by their statement of defence

(1) 13 Can. S. C. R. 130.
(2) 21 Ont. App. R. 663.
(3) 3 P. Wm. 306.
(4) 52 N. Y. 138.
(5) 10 H. L. Cas. 90.
(6) 9 Can. S. C. R. 12.
(7) 19 U. C. Q. B. 381.
(8) 32 Ch. D. 560.

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pleaded that they were purchasers for valuable consideration of the machine in question.

The action having come on for trial before Mr. Justice Rose, without a jury, the following facts were disclosed in evidence. It appeared that on the 1st September, 1893, Yates made a chattel mortgage in favour of the plaintiff to secure advances to be made. The description of the goods in this mortgage was as follows:

All of which said goods and chattels are now the property of the said mortgagor, and are situate in and upon the premises of the London Machine Tool Company (describing the premises), on the north side of King street, in the city of London.

A schedule referred to in the mortgage deed contained an additional description in these words:

And all machines * * * in course of construction or which shall hereafter be in course of construction or completed while any of the moneys hereby secured are unpaid, being in or upon the premises now occupied by the mortgagor * * * or which are now or shall be on any other premises in the said city of London.

The bolt cutter was wholly made, not upon the premises occupied by the mortgagor at the date of the mortgage, but on premises to which the mortgagor subsequently removed, and it never was upon lot 17. Mr. Justice Rose held this not to be a sufficient description within the Bills of Sale Act (1). The learned judge in his judgment (2), disposes of this point as follows:

The bolt cutter in question is not, I think, covered by the chattel mortgage to the plaintiff. It never was on lot no. 17, and even in the light of *Horsfall* v. *Boisseau* (3), I cannot hold that the words in the schedule *i.e.*, "or which are now or shall be on any other premises in the city of London" can extend to goods manufactured on the new premises and which never were on lot 17, nor if they should be construed to refer to such goods could I hold such words to be a sufficent description within the meaning of the Bills of Sale Act R. S. O. c. 125.

This view of the objection to the chattel mortgage was adopted by the Queen's Bench Division and the

(1) R. S. O. c. 125. (2) 16 Ont. P. R. 546.
(3) 21 Ont. App. R. 663.

Court of Appeal, and appears to me to be supported by conclusive authorities.

It was then attempted to show that the plaintiff had taken possession under the mortgage by his agent James Burns, but it clearly appeared from the evidence of Burns himself, when called as a witness by the plaintiff, that there was no change of possession, his position on the premises of the mortgagor being that of an inspector or watcher, and not that of one who had by taking possession superseded the possession and control of the mortgagor.

The plaintiff then proved that he had, apart from any title under the mortgage in September, 1894, purchased the bolt cutter from Yates and paid for it, the price being included in a draft which the plaintiff accepted and retired.

The tool cutter, however, remained on the premises of the London Tool Company, and was on the 11th December, 1894, sold by Yates to the respondents, the consideration being the discharge of a pre-existing debt due by the former to the latter; and in pursuance of this sale the machine or tool cutter was, on the 13th December, 1894, delivered to the respondents. The respondents insisted that they thus acquired a good title and that the previous sale to the appellant was avoided under section 4 of the Bills of Sale Act (1). The learned judge, however, refused to entertain this defence as the Act had not been pleaded, and also refused to permit the respondents to amend their statement of defence, and entered judgment for the appellant. On appeal to the Queen's Bench Division this judgment was reversed, and it being held that the respondents were entitled to the amendment which had been refused by Mr. Justice Rose the appeal was allowed and the action dismissed. This order was affirmed by the Court of Appeal.

(1) 57 V. c. 37, and R.S.O. c. 125, s. 4.

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On the argument of this appeal it was determined that this court would not interfere with an order granting leave to amend whatever opinion it might entertain of the propriety of the amendment, such an order being a matter of procedure within the discretion of the court below. Further, had I been called upon to pronounce upon that question, I should have been of the opinion that the amendment was most properly granted, and was in every way warranted by the authorities referred to in the judgment of the Divisional Court (1).

There remains but one other question discussed upon the argument to be noticed. It was insisted by the learned counsel for the appellant that the respondents were not *bonâ fide* purchasers for valuable consideration within section 5 of the Bills of Sale Act before referred to, inasmuch as the consideration given by them was the discharge of a pre-existing debt and not a consideration paid at the time of purchase.

Although authorities from the American reports can, as I am well aware, be cited in great number in support of this proposition, yet the English law, which we must follow, is well settled the other way. That a pre-existing debt is a sufficient consideration to bring a purchaser within the definition of a purchaser for value, and to entitle him to the protection afforded to such purchasers, has been well established, not only as regards the transfer of negotiable securities, but also in applying the principle of protection which courts of equity afford to such purchasers.

In the case of *Taylor* v. *Blakelock* (2), Lord Justice Bowen says:

> "A purchaser for value" is a well-known expression to the law. By the common law of this country the payment of an existing debt is a payment for valuable consideration. That was always the common

(1) 16 Ont. P. R. 548. (2) 32 Ch. D. 560.

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law before the reign of Queen Elizabeth as well as since. Commercial transactions are based upon that very idea. It is one of the elementary legal principles, as it seems to me, which belong to every civilized country; and many of the commercial instruments which the law recognizes have no other consideration whatever than a pre-existing debt.

The man who has a debt due to him, when he is paid the debt has converted the right to be paid into actual possession of the money; he cannot have both the right to be paid and the possession of the money. In taking payment he relinquishes the right for the fruition of the right. In such a case the transaction is completed; and to invalidate that transaction would be to lull creditors into a false security, and to unsettle business.

In the case of *Leask* v. *Scott* (1), it was held that the endorsee of a bill of lading who took the same in satisfaction of a prior debt was a *bonâ fide* transferee for value. And in the cases of *Poirier* v. *Morris* (2); *Swift* v. *Tyson* (3); and *Currie* v. *Misa* (4), the same rule was held to apply to transfers of bills of exchange and negotiable paper generally.

The reasoning upon which these cases are rested is entirely applicable to the case of a purchaser under sections 4 and 5 of the Bills of Sale and Chattel Mortgage Act (5), and should therefore govern the construction of those sections.

There was no pretense that the respondents had any notice of the appellants' title and they therefore in all respects bring themselves within the protection of the statute.

The appeal is dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant: *McEvoy, Wilson & Pope.*

Solicitors for the respondents: *Gibbons, Mulkern & Harper.*

(1) 2 Q. B. D. 376
(2) 2 E. & B. 89.
(3) 16 Peters 1.
(4) L.R. 10 Ex. 153.
(5) R.S. O. c. 125.