

1905. RUSSELL ALBERT HULBERT }
 *May 31. AND MARSHALL A. WORTH } APPELLANTS;
 *June 2. (DEFENDANTS)..... }

AND

MICHAEL PETERSON (PLAIN- }
 TIFF)..... } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF THE NORTH-
 WEST TERRITORIES.

*Chattel mortgage—Registration—Subsequent purchaser—Removal of
 goods.*

For purposes of registration of deeds the North-West Territories is divided into districts, and it is provided by Ordinance that registration of a chattel mortgage, not followed by transfer of possession, shall only have effect in the district in which it is made. It is also provided that if the mortgaged goods are removed into another district a certified copy of the mortgage shall be filed in the registry office thereof within three weeks from the time of removal otherwise the mortgage shall be null and void as against subsequent purchasers, etc.

Held, reversing the judgment in appeal, that the “subsequent purchaser” in such case must be one who purchased after the expiration of the three weeks from time of removal, and that though no copy of the mortgage is filed as provided it is valid as against a purchase made within such period.

A PPEAL from a decision of the Supreme Court of the North-West Territories affirming the judgment at the trial in favour of the plaintiff.

The defendant Hulbert was mortgagee of chattels under a mortgage from one McDonald and had registered his mortgage in the District of Edmonton. Mc-

*PRESENT:—Sir Elzéar Taschereau C.J. and Sedgewick, Davies, Nesbitt and Idington JJ.

Donald removed the mortgaged goods into the District of Calgary and, within three weeks from the time of such removal, sold them to the plaintiff Peterson. Some two months later the defendant Hulbert sent his co-defendant Worth, a bailiff, to seize the goods. Worth took them out of plaintiff's possession, and the latter brought an action for conversion, in which he obtained a verdict for \$125.

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After the removal of the goods into Calgary District, Hulbert failed to comply with the provision of the Ordinance requiring a certified copy of the mortgage to be filed within three weeks, and his mortgage became void as against the plaintiff, provided the latter was a subsequent purchaser under the Ordinance.

The court below held that subsequent purchaser in the Ordinance meant a purchaser subsequent to the removal and not subsequent to the expiration of the three weeks within which the copy must be filed.

Beck K.C. for the appellant, having stated the point in issue the court called upon counsel for respondent to maintain the judgment appealed from.

Masters K.C. for the respondent. Registration Acts were passed to prevent frauds arising from mortgagors retaining possession of mortgaged property, and should be construed strictly. *Boulton v. Smith* (1); *Harding v. Knowlson* (2); *Olmstead v. Smith* (3).

The cases relied on by the dissenting judge below and by appellants in their factum of failure to renew a chattel mortgage on expiration of a year from registration and a purchase within the year are distinguishable. They were decided entirely on the ground

(1) 17 U.C.Q.B. 400; 18 U.C.
Q.B. 458.

(2) 17 U.C.Q.B. 564.
(3) 15 U.C.Q.B. 421.

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of notice and that the purchaser merely replaced the mortgagor. *Hodgins v. Johnston*(1) is one of those cases. The other, *Clarke v. Bates*(2), has no application. That was a case of removal under a statute in the same terms as the Ordinance in this case, but it was decided on the ground that the goods were removed by a stranger and not by the mortgagor.

Even in case of failure to renew a mortgage a purchase within the year has been held good. *McMartin v. McDougall*(3); *Courtis v. Webb*(4); *Boynton v. Boyd*(5).

In *Clarkson v. McMaster*(6), this court held that where by statute possession of mortgaged chattels would not validate a mortgage void for want of registration as against creditors becoming such before possession taken, the mortgage remained void as against those becoming creditors after possession.

The judgment of the court was delivered by

SEDGEWICK J.—The defendant Hulbert was mortgagee of the goods in respect of which this action was brought. The mortgage is dated the 18th April, 1902, and was registered in the office of the Registration Clerk for the Edmonton Registration District on the 28th day of April, 1902. About three months later the mortgagor removed the goods to the Calgary Registration District. Within three weeks after such removal he sold the goods in the latter Registration District to the plaintiff. About six weeks after the sale, the defendant Hulbert, hearing of the removal and

(1) 5 Ont. App. R. 449.

(2) 21 U.C.C.P. 348.

(3) 10 U.C.Q.B. 399.

(4) 12 U.C.C.P. 334.

(5) 25 U.C.Q.B. 576.

(6) 25 Can. S.C.R. 96.

sale, took the goods from the plaintiff, whereupon he brought this action for the conversion of the goods. The mortgage was never registered in the Calgary District.

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The only question involved in this case therefore is: Was the plaintiff's title subject to the defendant Hulbert's mortgage?

Section 29 of the Bills of Sale Ordinance provides:

In the event of a permanent removal of goods and chattels mortgaged * * to another registration District * * a certified copy of such mortgage * * shall be filed with the registration clerk of the District to which such goods and chattels are removed, within three weeks of such removal, otherwise the said goods and chattels shall be liable to seizure and sale under execution, and in such case the mortgage shall be null and void as against subsequent purchasers and mortgagees in good faith and for valuable consideration as if never executed.

The case was tried before Sifton C.J. who gave judgment for the plaintiff and this judgment was affirmed on appeal by the Supreme Court of the Territories, Scott J. dissenting.

We are all of opinion that the appeal must be allowed, because in our view the expression "subsequent purchaser" in the section just quoted means a purchaser after the expiration of the three weeks specified as the period within which the mortgagee must file his mortgage. During those three weeks he had all the rights with the common law and the Bills of Sale Ordinance secured to him, and any dealing with them by the mortgagor was in violation of or repugnant to those rights within that period and absolutely unavailing as against the mortgagee. We therefore think that the appeal should be allowed and the action dismissed, the whole with costs, the costs in

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the courts below to be taxed according to the proper
scale.

Appeal allowed with costs.

Solicitors for the appellants: *Rutherford & Jamieson.*

Solicitors for the respondent: *MacDonald & Griesbach.*
