1931 *Oct. 16.

1932 *Mar. 1.

THE ROYAL BANK OF CANADA (DEFENDANT) .... APPELLANT;

AND

MURDO MACKENZIE (PLAINTIFF)......RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Chattel mortgage—Sufficiency of description of chattels—Bills of Sale Act, Alta., 1929, c. 12, s. 5—Sufficiency of affidavit of bona fides—Mode of adaptation of unsuitable form—Banks and banking—Security under s. 88 of the Bank Act (R.S.C., 1927, c. 12) on rancher's live stock—Form C used instead of form E—Validity.

M. mortgaged to defendant bank chattels thus described: "60 Rams; 700 Ewe Lambs (etc., giving the number of sheep in each of different classes); All sheep of whatever age and description belonging to the mortgagor being not less than 3,880 head, branded , but not excluding those not so branded. 1 Belgian Stallion; 30 head of Horses." The chattels were stated to be now in the possession of the mortgagor and to be situate on certain described land.

Held: The description of the sheep satisfied s. 5 of the *Bills of Sale Act,* Alta., 1929, c. 12. The clause following the enumeration meant all the sheep belonging to the mortgagor, and its meaning was not changed by the preceding particulars. A description is sufficient when it is apparent that the mortgage covers all the chattels of the specified kind owned by the mortgagor (*McCall* v. *Wolff,* 13 Can. S.C.R. 130; *Hovey* v. *Whiting,* 14 Can. S.C.R. 515; *Thomson* v. *Quirk,* 18 Can. S.C.R. 695). The mere fact that the mortgage stated a larger number of sheep than the mortgagor owned could not make the mortgage void as to the sheep he did own. The description of the horses was insufficient.

In the affidavit of *bona fides,* the printed form on the mortgage, which was apparently one in use under a former wording of the Act, was adapted by, after the preliminary part, pasting over the unsuitable part a sheet on which were typewritten the allegations required, the typewritten sheet extending below the part of the printed form so covered over, the jurat of the printed form being used, and the commissioner initialling in the margin the typewritten sheet.

Held: The affidavit (though the adaptation was a slovenly method) complied with the statutory requirement. The pasting over was a mode of erasure and substitution, which was authenticated by the commissioner's initialling. The fact that by holding the document to the light the printed words covered over or part of them might be read, made no difference, the intent to erase or blot out being manifest.

The bank took what purported to be security under s. 88 of the *Bank Act* (R.S.C., 1927, c. 12) on livestock of a rancher, but used form C instead of form E.

*Present at hearing of the appeal: Duff, Newcombe, Lamont, Smith and Cannon JJ. Newcombe J. took no part in the judgment, as he died before the delivery thereof.

Held: The document was in form to the like effect as form E, and constituted a valid security. It sufficiently stated that the advance was made on the security of the live stock mentioned therein; and the statement that the security was given under the provisions of s. 88, instead of that it was given "under the provisions of subs. 12 of s. 88" (as in form E), was sufficient.

Judgment of the Appellate Division, Alta., 25 Alta. L.R. 281, reversed.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta (1).

The plaintiff, who sued on behalf of himself and the other creditors of the estate of William McLennan, deceased, attacked the validity of a chattel mortgage made by the said McLennan to the defendant bank; and also attacked the validity of a security purporting to be given by said McLennan to the bank under the provisions of s. 88 of the *Bank Act*.

The trial judge, Walsh J. (2), held that the chattel mortgage was a valid security (except as to the stallion and horses mentioned therein); but held against the validity of the security taken under the provisions of s. 88 of the *Bank Act*.

The Appellate Division (1) held (Clarke J.A. dissenting, who agreed with Walsh J. in this respect) that the chattel mortgage was invalid, by reason of defective description of the chattels, and also by reason that it was not accompanied by a proper affidavit of *bona fides;* and held also (Clarke J.A. dissenting) against the validity of the security taken under the provisions of s. 88 of the *Bank Act*.

The defendant bank appealed to the Supreme Court of Canada.

The material facts of the case and the questions in issue are sufficiently stated in the judgment now reported, and are indicated in the above head-note. The appeal to this Court was allowed with costs.

H. G. Nolan for the appellant.

W. A. Begg K.C. for the respondent.

(1) 25 Alta. L.R. 281; [1931] 2 W.W.R. 129; [1931] 2 D.L.R. 884.

(2) 25 Alta. L.R. 281; [1931] 2 W.W.R. 129; [1931] 1 D.L.R. 981.

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The judgment of the court was delivered by

SMITH J.—One William McLennan, now deceased, had a sheep ranch in the vicinity of Suffield in the province of Alberta, and made a chattel mortgage dated 20th December, 1929, to the appellant, to secure $9,500 and interest on chattels described as follows:

60 Rams; 700 Ewe Lambs; 700 Yearling Lambs; 1,920 Two, Three and Four Year Old Ewes; 450 Five Year Old Ewes; 50 Six Year Old Ewes; All sheep of whatever age and description belonging to the mortgagor being not less than 3,880 head, branded , but not excluding those not so branded.
1 Belgian Stallion; 30 head of Horses.

These chattels are stated to be now in the possession of the mortgagor and to be situate on "all of the South Half and North-west Quarter of Township Fifteen (15), Range Eight (8), West of the Fourth Meridian, in the Province of Alberta." The mortgagor died on the 28th day of May, 1930, insolvent, and the (plaintiff) respondent is one of the unsecured creditors suing on behalf of himself and other creditors of the deceased mortgagor, to have it declared that the chattel mortgage referred to is void as against the creditors of the mortgagor.

The first ground of attack is that the description quoted above does not satisfy the provisions of the *Bills of Sale Act* of Alberta (1929, c. 12, s. 5), which provides as follows:

Every bill of sale shall contain such sufficient and full description of the chattels comprised therein that the same may be thereby readily and easily known and distinguished.

I agree with the learned trial judge that the clause following the enumeration of the sheep means all the sheep belonging to the mortgagor, and that it is not necessary to introduce any words not there. If that clause stood alone as a description of the sheep, there would be no doubt as to its meaning, and I do not see that the meaning is changed by the preceding particulars as to the numbers of sheep in each of the different classes.

As the learned trial judge points out, the cases establish that the description is sufficient when it is apparent that the mortgage covers all the chattels of the specified kind owned by the mortgagor. *McCall* v. *Wolff* (1); *Hovey* v. *Whiting* (2); *Thomson* v. *Quirk* (3). The mere fact that

(1) (1885) 13 Can. S.C.R. 130. (2) (1887) 14 Can. S.C.R. 515.
(3) (1889) 18 Can. S.C.R. 695 (appendix).

the mortgagor has stated in the mortgage a larger number of sheep than he actually owned cannot make the mortgage void as to the sheep he did own. The description of the horses is, as the learned trial judge finds, insufficient.

The second objection to the validity of the mortgage is that the affidavit of *bona fides* does not comply with the statutory requirement.

There is on the printed form of mortgage used a printed blank form of affidavit in use apparently before the enactment of the statute as it now stands, which provides for a different form of affidavit. The conveyancer undertook to adapt the printed form of affidavit on the document by striking out the unsuitable part and substituting, in typewriting, what was necessary. He made use of the preliminary part of the printed form down to the words "make oath and say", and covered over all the printed words following these down to the jurat by pasting over them a sheet containing, in typewriting, all the allegations required by the statute. As this typewriting took up more space than that occupied by the printed words covered up, the bottom part of the typewritten sheet extends beyond the part of the printed form so covered over.

The jurat of the printed form is used and the commissioner initials in the margin this typewritten sheet. Much as one is inclined to censure the slovenliness of this kind of conveyancing, I am of opinion that in fact the affidavit complies with the statutory requirement. We have the preliminary part of the affidavit followed in typewriting by all the allegations required, and then the jurat. Pasting the substituted sheet over the printed words not intended to form part of the affidavit was a mode of erasure of these words and substitution of the typewritten words, and, being initialed by the commissioner, this erasure and substitution is authenticated and leaves no ground for doubt as to what the affidavit sworn to by the deponent really was. The fact that by holding the document up to the light the printed words covered over or part of them may be read, seems to me to make no difference, the intent to erase or blot out being manifest. When words in a document are erased as is usually done by

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drawing a pen through them, they remain legible, but it does not follow that they are not erased.

I agree with the learned trial judge that the statements in the affidavit are in compliance with the statute.

The chattel mortgage, therefore, is a security on all the mortgagor's sheep, valid as against the creditors of the mortgagor, but invalid as a security on the horses mentioned.

As to the security under section 88 of the *Bank Act,* I am in accord with the view of Mr. Justice Clarke of the Appellate Division.

Section 88, subsection 12, of the *Bank Act,* R.S.C., 1927, Chap. 12, authorizes a bank to lend money to any person engaged in stock raising upon the security of his live stock, and by subsection 14 it is provided that:

> The security taken under subsection twelve of this section may be taken in the form set forth in schedule E to this Act or in a form to the like effect.

In this case, form C was used instead of form E, and as subsection 14 is only directory the whole question is as to whether what is contained in the form C used is to the like effect of what is required by form E.

The learned trial judge found that, in two respects, what is stated in the form used fails to comply with what is required by form E, namely, that the advance was made on the security of the live stock mentioned in it, and that the security was given under subsection 12 of section 88, the particular subsection 12 not being mentioned. As to the first of these objections, the document states that in consideration of an advance of $2,000 made by the Bank to the undersigned, for which the Bank holds bills or notes, the live stock or dead stock or the products thereof, mentioned below, is hereby assigned to the Bank as security for the payment of said bills or notes.

I am unable to understand how it can be said that this fails to be a statement that the advance was made on the security of the live stock mentioned. I think it is a clear statement to that effect.

The other objection, that the document states that the security is given under the provisions of section 88 of the *Bank Act* instead of "under the provisions of subsection twelve of section eighty-eight," seems to me to be of little

force. How could the omission to state the particular subsection mislead anyone? The only provision of the Act authorizing a loan on the security of live stock is subsection 12 of section 88. The document sets out that the loan is on the security of the live stock mentioned, and anyone looking at section 88 must know at once that, if the loan is under the provisions of section 88, it must be under subsection 12 of that section.

For these reasons and those stated by Mr. Justice Clarke, I am of opinion that the document as completed is in form to the like effect of form E and constitutes a valid security.

The appeal should be allowed with costs and the action dismissed with costs throughout.

Appeal allowed with costs.

Solicitors for the appellant: *Bennett, Hannah & Sanford.*

Solicitor for the respondent: *Wm. A. Begg.*