

HIGH COURT DIVISION.

ROSE, J.

JULY 5TH, 1920.

SUTTON v. PURSEL.

Assignments and Preferences—Money Lent by Wife to Husband—Repayment by Deposits Made by Husband in Bank to Credit of Wife's Account—Preference of Wife over other Creditors—Intent to Prefer—"Payments of Money"—Assignments and Preferences Act, sec. 6 (1)—Deposits of Cheques not "Payments of Money"—Property Bought by Wife with Moneys Deposited—Charge in Favour of Creditors upon Property to Extent of Amount of Cheques and Interest—Gift of Property by Husband to Wife—Insolvency of Husband—Rights of Creditors.

Action by a judgment creditor of H. W. Pursel, suing on behalf of himself and of all other creditors, for a declaration that certain funds which Pursel deposited in a bank to the credit of his wife, the defendant, as well as certain property, real and personal, which she bought, and partly paid for with moneys drawn from the bank, and by the transfer of a pair of horses which Pursel had given her, were available for the satisfaction of the creditors' claims, and for consequent relief.

The action was tried without a jury at Simcoe.

T. J. Agar, for the plaintiff.

F. C. Kerby, for the defendant.

ROSE, J., in a written judgment, said that Pursel was an hotel-keeper. In 1910 he moved from Windsor to Forest and bought an hotel, in which he carried on business until 1913, when he sold out and moved to Simcoe, where he took a lease of an hotel, which he kept until about August, 1916, when he gave up business and went to Leamington.

The defendant said—and was believed by the learned Judge—that, when she and her husband moved to Forest, she lent him, to assist in making the first payment on account of the purchase-price of the hotel there, \$1,100, part of a larger sum which she took with her from Windsor; that she lent him in Forest \$300 for the purchase of stock; that, when they moved to Simcoe, she lent him \$500 for use in making the first payment on account of the price of furniture which he bought for the hotel which he there leased; and that, later on, she lent him, at Simcoe, something over \$300.