The question was debated in the Courts below whether, under the law established by these Articles, déplacement or a change of possession was not still necessary to give the petitioner a title against the assignee in insolvency. Their Lordships, however, do not feel it necessary to determine this question, because, allowing the Appellant's construction of these Articles to the fullest extent, and assuming for the purpose of the present decision that, upon a genuine contract of sale, the property sold would pass to the vendee, as regards not only the vendor, but third persons, without delivery or déplacement, they agree with the opinion of Chief Justice Dorion (in which Justices Cross and Tessier concurred) that the transaction in question was not a genuine but a simulated sale, and, if at all real, was a contrivance intended to obtain, under color of a sale, a security upon the plant and effects, and thus to avoid the delivery of possession which is essential to the validity of a pledge. (*See*, as to pledge, Arts. 1966-1970, Canadian Civil Code.)

In examining the character of the transaction, it is in the first place to be observed that the alleged sale was not for a price in money, nor for anything equivalent to money; nor was the consideration fixed and certain, but wholly indeterminate, the amount depending on future contingencies. The considerations expressed in the instrument are, (1) one dollar, which of course is merely a nominal, and not a serious part of the consideration; (2) "other good and valuable consideration heretofore had and received;" the nature and amount being both unexpressed, and (3) what appears to be the real consideration, viz., that the vendee should endorse the paper of the firm, which he agreed to do on demand, for a sum which, together with present unsecured endorsements, should not exceed in all 2,000 dollars. This agreement of the Appellant to give his endorsements by way of accommodation to the firm is obviously a consideration of an indeterminate character. Suppose he refused to give them, the remedy would be an action for breach of the agreement, in which the damages would be uncertain. Again, he does not bind himself to pay the bills he may endorse, and the holders might in the first instance choose to sue the firm. The ultimate extent of the liability on the agreement to indorse is plainly uncertain. This vague and contingent liability contains none of the elements of a fixed price, which is one of the essential incidents of the contract of sale. (*See* Pothier, Traité du Contrat de Vente, Part I., Sec. 2, Art. 2, secs. 1, 2, 3.)

But, however inconsistent the consideration expressed in the bill of sale may be with the idea of a sale, it would be fit and sufficient to support a contract of pledge for securing the Appellant against loss arising from his endorsements of the paper of the firm; and that this, if it were at all real, was the nature and object of the transaction, is shown by other circumstances attending it. The value of some of the effects (for what reason does not appear) is stated in the deed, and this value alone amounts to $4,800. The rest is not valued, but obviously must have been of substantial value. It is scarcely to be supposed that all these effects would have been absolutely sold to the Appellant for a contingent consideration which could not exceed $2,000.

Then, on the same day, the whole of the effects are leased to the insolvents for a yearly rent of $100. As the Chief Justice points out, this rent would return the supposed owner of the plant and stock 1½ or 2½ per cent. only upon their value, whilst these implements would come back to him at the end of the term deteriorated by wear and tear. Such a rent he considers to be illusory. Under colour of this lease the insolvents were able to retain the plant and carry on their business as usual.

It is to be observed that a transaction which presents on the face of the documents so anomalous a character has received no extraneous support or explanation. The appellant gave no evidence of any antecedent consideration, or of the extent of his endorsements of the paper of the firm, or of any circumstances to explain the alleged purchase.

It is scarcely necessary for their Lordships to say that, supposing (as they have assumed) the law to be that the property in the thing sold passes by a genuine contract of sale without delivery, even as against third persons, yet the circumstance of there being no change of possession must still be one of the material facts to be regarded in determining the question whether any particular sale is real or simulated.

In the present case their Lordships, for the reasons they have stated, agree with the majority of the Judges of the Court of Queen's Bench in their conclusion that, whatever may be the real nature of the transaction in question, it has not the indicia of a *bonâ fide* sale.

They will, therefore, humbly advise Her Majesty to affirm the judgment appealed from, and with costs.