

The question submitted to the Court was, whether there was sufficient evidence upon which the Judge could properly find the defendant "guilty" of the offence of unlawfully, fraudulently, and knowingly, by false pretences, obtaining from the firm of McDonald & Halligan, cattle to the value of \$676.28, with intent to defraud the said McDonald & Halligan.

The learned Judge did not make any statement of the facts, but made the evidence taken at the trial part of the case.

The evidence shewed that the defendant had brought the cattle for cash from McDonald & Halligan, through one Glazer; that Glazer was allowed to take the cattle upon giving the firm the defendant's unmarked cheque for \$676.28; that there had been similar dealings before, on which occasions the cheques had been paid; that, on this occasion, when the cheque was presented two days after it was received, there were not sufficient funds for it, the defendant having then only \$1.99 to the credit of his account in the bank on which the cheque was drawn; that the balance which the defendant had in the bank on the day upon which the cheque was given, which would have been sufficient, was withdrawn on that day by cheques to Glazer and others, dated on that day; and that the defendant resold the cattle, and made use of the money he got for other purposes.

The defendant said in evidence: "When I received the money for the cattle, and I knew I should not be able to pay all things and for the cattle too, I thought I better give that money right away." He made no more deposits in the bank except \$4 or \$5.

The case was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

T. J. W. O'Connor, for the defendant.

J. R. Cartwright, K.C., for the Crown.

The judgment of the Court was delivered by MAGEE, J.A. (after setting out the facts at length):—Here then was a man, who, according to his own account, was insolvent and dishonest, issuing this cheque concurrently with four others, any one of which would have left an insufficient sum at his credit to meet the amount, and post-dating those cheques so that they would be payable to persons who were pressing for their money, on the very day on which the purchase is made. A jury would be well warranted in concluding that he counted upon the cheque to McDonald & Halligan not being presented in the ordinary