

into a formal partnership agreement, in which it is recited that the parties had become possessed in equal shares of the piano business lately carried on by her. Under this agreement the same firm name was adopted, and, by a bill of sale, dated 31st January, 1900, Mrs. Prince conveyed to Dodds a one-half interest in the assets of the business.

On 29th January, 1900, Cockburn indorsed for the partnership a note for \$3,500, and an account was opened in the firm's books, in the name of W. A. Cockburn, in which he was debited with the note and credited with the proceeds, and this account was continued in the books, shewing him to be a creditor for various balances, until the transfer was made to Condie, after which Condie appears in the books as creditor until the assignment.

The partnership between Mrs. Prince and Dodds was dissolved on 30th May, 1901, and by the agreement of that date, in consideration of the payment by Dodds to her of her interest, ascertained to be \$193.05, she transferred to him all her interest, with a right to continue the trade name.

Dodds continued alone until 18th February, 1903, when J. T. White became a partner, and they continued to carry on the business until 1st September, 1903, when the partnership was dissolved, and since that time, until the assignment, Dodds continued the business alone.

On 1st March, 1901, Mrs. Prince and Dodds executed a chattel mortgage on the partnership assets to W. A. Cockburn, which was expressed to be a security for "the amount of the account from time to time owing by the mortgagors to the mortgagee." This mortgage was not registered.

On 19th October, 1903, Dodds made a mortgage to Condie, defendant, for \$4,500 on the business assets, which was filed; but in an action by these plaintiffs on behalf of themselves and creditors of Dodds and the Prince Piano Company, it was declared to be void.

It was pointed out upon the argument that the logical result of the judgment as it stands is that if Cockburn and not Dodds was the actual owner of the business, the personal creditors of Dodds should not be entitled to rank on the estate; and should there be a surplus Dodds should be deprived of it, although he was not a party to the proceedings or even called as a witness; and further that Cockburn.