

actual owner of the business; in other words, whether Dodds was a mere agent or trustee for him.

While assuming all the alleged statements to have been actually made by Cockburn, and granting that, unanswered, they would furnish the best proof against defendant's right to rank, they are not in this case final or conclusive.

Plaintiffs' claim is not based on estoppel, warranty, misrepresentation, or fraud. They do not pretend to say that in any way plaintiffs acted upon anything that was said by Cockburn, or that their position was in any way changed, or their conduct in any way influenced, in consequence of the statements alleged.

The statements, therefore, not being in themselves the foundation of any independent right of plaintiffs by virtue of the doctrine of estoppel, warranty, or representation, defendant is at liberty to disprove their truth as items of evidence against him. . . .

[Reference to *Heane v. Rogers*, 9 B. & C. 577, 586; *Ridgway v. Philip*, 1 C. M. & R. 415.

In addition to the evidence of Cockburn denying the truth of the statements related by plaintiffs' witnesses, he deposed that in all his statements regarding his interests in the company he had reference to his position as chattel mortgagee, and that it was under the power and authority of his mortgage that he contemplated selling the assets of the company.

It seems to me, having regard to all the circumstances of the case, that the interest he manifested in the business, and his efforts to realize upon it, are quite consistent with his position as holder of a chattel mortgage for a sum nearly approaching the full value of the business, and that his statements and conduct might be fairly referable to his position and rights thereunder.

The conduct of all the parties and the records of the company from beginning to end strongly support this attitude, and are inconsistent with the claim that Cockburn was the owner or partner.

During the latter part of 1899 Mrs. Jennie Prince was carrying on business under the name of the Prince Piano Company, having purchased but not paid for the assets of an insolvent business in which her husband was a partner, and on 24th January, 1900, she and George Dodds entered