

On this supposition of the property continuing down to this date in Mrs. Betts there was at this date a transfer to Charman of the goods for \$1,700, which she either made or ratified, and a transfer of the note for that amount to Morrison which being made within sixty days of the action would be presumed to be with intent to give an unjust preference, and therefore void as against the creditors postponed, unless that presumption could be rebutted.

The action does not seem to have been framed exactly on this theory, but the learned trial Judge has ordered all necessary amendments to be made, and if it were necessary to support the judgment by this reasoning, I see no difficulty in the way.

Assuming the bill of sale to be either a transfer of the goods as the goods of Mrs. Betts or as the goods of Lannis H. Betts,—that is to say, no matter what individual person we assume to be represented by the firm name of “Betts & Co.,” and assuming the bill of sale to be operative *prima facie* in effecting a transfer of the property in the goods described,—that is to say, assuming that the goods being those of Mrs. Betts, there is no invalidity in the transfer merely because of the way in which the authority conferred by the power of attorney was exercised, or because of the transfer being unauthorised by the power of attorney,—I am of the opinion that the agreement which the trial Judge has found on sufficient evidence, to keep it unrecorded was a fraud on the statute and rendered the transfer void as against creditors. It is, I think, quite correct to say as Mr. Mellish contended that the only consequence of non-registration of the bill of sale is to subject the transferee under the instrument to the risk of losing the benefit of the security, but where there is an agreement not to register it, I think the effect of such agreement may be to render it void. Possibly this result may not always follow, although Strong, C.J., seems to have so held in *Clark v. McMaster*, 25 S. C. R. at page 105, where he says: “Not only was there a non-compliance with the condition of the Act in respect of registration, and taking possession, but there was a distinct agreement between the mortgagor and mortgagee that there should be neither registration nor immediate possession,—in other words that a transaction which the law required should be open and notorious, to be made so either by registering the mortgage or taking possession of the goods, should be concealed from