

attention of Gilmour, because he was interested in them, and which led him to desire to assume the control of the whole business in order to protect himself. He had in his hands at the time, as having discounted the same, a large amount of overdue notes and drafts either made or endorsed by Dufresne, two of which at least had been allowed to go to protest with his knowledge only a few days before; and Dufresne says that one of the conditions of the sale was that Gilmour was to advance him \$8,000 with which to pay off his creditors. By his own showing Dufresne owed him \$14,721.29, wholly unsecured after deducting the four hypothecs and the consideration price of the sale, \$15,000. How did he expect that Dufresne after divesting himself of all his property and handing over all his business as he did by the sale, was going to pay this large sum of over \$14,000, and the \$38,000 which he owed other people? Gilmour was in a position to know, and from all the circumstances it is reasonable to presume that he did know, that Dufresne was utterly unable to meet his engagements.

The retention of the property by Dufresne after the sale, no matter from what motive, is to say the least peculiar. By the terms of the deed Gilmour was to have possession forthwith, and Dufresne says that he did give him possession. As a matter of fact no effective possession was ever given. The day following the sale Gilmour asked one Jackson to stay in the paint shop at Bedford while he and Dufresne went to Montreal; and the next day Dufresne told Jackson that he did not want him there, and the latter went away. Dufresne was in undisputed possession of the factory until Gilmour took out the *saisie-revendication* on the 13th September. As to the store in Montreal the business there was managed by Frappier. On the 24th August, the day before the sale, and evidently in anticipation of it, Dufresne had arranged with Frappier to give him possession of the stock, undertaking to retire all the notes and drafts which Frappier had given. The day following the sale Dufresne and Gilmour go to Montreal together, and Gilmour gives Frappier a guarantee that he will provide for the payment of these notes

and drafts himself. No mention is made of the sale, but Frappier says that he understood that he was after that time to account to Gilmour for the cash received and for customers' notes; that Gilmour was to have control of the finances to secure him for the money which he might advance to pay off Dufresne's debts; that there was no taking possession of the store or business by Gilmour, and no change in the name under which the business had been carried on. The evident intention was that the business was to continue in appearance as before. Dufresne was to remain in charge of the factory, but the finances were to be wholly managed by Gilmour, and in this way the other creditors would have no apparent occasion for alarm. Dufresne, however, having refused afterwards to carry out his part of the understanding, because, as he says, Gilmour failed to advance him the balance of the \$8,000, having only given him \$1,417 at Montreal on the 26th August, it became necessary for Gilmour to take legal proceedings, and in his affidavit he swears that Dufresne refused to give up possession. This clearly establishes that Gilmour did not consider that he had been put in possession of the property sold him by Dufresne.

I am unable from the evidence to say whether the parties intended to make the sale public or not; the delay between the sale and the seizure—twenty days—was too short a time for any manifestation of such intention, and particularly as the parties had at a very early period disagreed with reference to their unwritten undertakings. By the deed Dufresne had one year in which to redeem the property, and I am very much disposed to think that had no trouble arisen rendering litigation necessary nothing would have been said about the deed.

The evidence discloses one or two circumstances in connection with the consideration mentioned in the deed, which are deserving of notice. It is therein expressed as being \$15,000 cash already advanced. Gilmour says it was for three notes which he then held against Dufresne, and he produces at the *enquête* one of them, and says the other two were delivered up to Dufresne at the time of the sale; they are described in table