

The judgment of the Court was delivered by SUTHERLAND, J.:—This action arises out of a sale by the plaintiff to the defendant of certain chattel property in the "Temple Theatre," in the city of Chatham, used in connection with a moving picture show. . . . On the night of the 2nd November, 1912, Baxter, acting for the plaintiff, made a sale to the defendant, and it is said that a brief memorandum was made and executed that night, but it was not produced at the trial. The defendant testified that he thought that he was dealing only with Baxter, as the owner, but admits that the plaintiff's name was mentioned. Baxter says that he explained to the defendant that he (Baxter) had sold to the plaintiff, who was selling to the defendant; and the solicitor, Mr. Gundy, who prepared the papers on the following Monday, says that the defendant, Baxter, and the plaintiff all came to his office for that purpose, and it was explained to him (the solicitor), before he drew them, that a sale had been made by Baxter to the plaintiff, and that the plaintiff had resold to the defendant.

No formal bill of sale had been made by Baxter to the plaintiff; and the bill of sale drawn on Monday the 4th November was from Baxter directly to the defendant, and covered the chattel property in question, together with the goodwill of the business in the theatre; and the price which had been agreed upon, namely, \$1,500, was inserted therein. It was duly executed by Baxter and delivered to the defendant. . . . At the same time the defendant executed . . . a cheque in favour of Baxter for \$50, a bill of exchange or cheque for \$450 in favour of the plaintiff—the instrument sued upon—and two lien-notes, each for \$500, in each of which the defendant promised to pay . . . Baxter . . . the sum of \$500, without interest. . . .

It is quite clear, I think, that the defendant promptly rued his bargain, thinking probably that he had paid too much for the property. . . .

If an assignment of the lease were in fact a term of the contract of sale from the plaintiff to the defendant—and the evidence does not in a satisfactory way make this out—he clearly waived this, retained the documents evidencing his title to the chattels, and dealt with them as their owner. I think that he must be held to have ratified the agreement after the alleged breach, and to have converted the goods to his own use. But it is clear that, having repented of his bargain with the plaintiff, and concluded that he could deal more advantageously with the landlord, he did not want to have the contract with the plaintiff, as entered into, carried out, and did not want to obtain, through