

certain statements and representations made by Cockburn to plaintiffs and others, with regard to the Prince Piano Company's business.

These statements, according to plaintiffs' witnesses, were substantially as follows: "He said he had bought one-half interest in the Prince Piano Company." "He asked me if I was open for a proposition to buy out the Prince Piano Company. He was the proprietor." "He told me George Dodds had no interest in it whatever; he said he owned the business, and that Dodds was managing the business for him. He said he had the Prince Piano Company. He was interested in that." "He told me he owned every cent that was in that factory, and that Dodds was not doing what was right, and he was not going to give him any more chance, and he was going to close out the business." "He called at my place and forbid me paying Dodds any money, and said he was the owner, and that the money was to be all paid to him."

In his evidence Cockburn does not specifically deny that he made these and similar statements, but swears that in fact he never for himself bought any interest in the Prince Piano Company business, but that he, in 1900, advanced money for the purchase of the assets of a former business which had failed, for George Dodds, his father-in-law, who was a practical piano maker, and Mrs. Prince, whose husband was also a practical piano maker, and who had been a partner in the insolvent firm, and subsequently made further advances for the purpose of enabling the business to be carried on, taking a chattel mortgage to cover the original and subsequent advances, which mortgage, however, was not registered; and further states that all he said and did from the beginning was in respect of his interest as the chief creditor of the firm, holding a chattel mortgage under which he was entitled to close out the business. That he did make efforts to find a purchaser, in order to realize upon his interests, as Dodds was drinking heavily, and was not attending to the business, and he said he explained the nature of his interest to nearly all the persons he spoke to about the matter.

The right of defendant to rank on the estate of the Prince Piano Company depends upon whether, as a matter of law, upon all the evidence, Cockburn was or was not the