

The matter now to be considered was the claim based upon that Act, and the first question was, whether the action was begun within the time limited.

By sec. 9 of the Act, no action shall be brought to set aside or have declared void any sale for failure to comply with the provisions of the Act, unless such action is brought within 60 days from the date of such sale or within 60 days from the date when the creditor attacking such sale first received notice thereof. This action was not brought within 60 days from the date of the sale; and the question was, whether it was brought within 60 days from the date when notice came to the plaintiff or his solicitor.

After the plaintiff had recovered a judgment against A. G. Fulton, and more than 60 days before this action was brought, the plaintiff's solicitor had an interview with Fulton's solicitor, the plaintiff's solicitor seeking and obtaining information about Fulton's dealings with certain interests which he had in a timber company; and Fulton's solicitor asserted and the plaintiff's solicitor denied that, in the course of the interview, the matter of the sale now in question came up and the bona fides of it was discussed.

Each of the solicitors was perfectly sincere in his statement as to his recollection of what was said at the interview. The case was one where, of two witnesses of equal credibility, one positively avers that certain words were said and the other as positively denies it. The rule to be applied is that mentioned in *Lane v. Jackson* (1855), 20 Beav. 535; *Lefeunteum v. Beaudoin* (1897), 28 Can. S.C.R. 89, 94; *Kastor Advertising Co. v. Coleman* (1905), 11 O.L.R. 262, 267; *Rex v. Stewart* (1902), 32 Can. S.C.R. 483, 501; and other cases. It is to be found that the statement was made, and that he who denies it has forgotten it, unless there is something else in the evidence which justifies the opposite conclusion.

The evidence of the plaintiff's solicitor was said to be corroborated by the fact that he made a memorandum of some of the things told him about the timber, and that nothing about the sale now in question appeared in that memorandum, and by the further fact that he commenced this action very soon after he had examined A. G. Fulton as a judgment debtor and had obtained information about the sale of the interest in the partnership assets. Against these facts, however, was to be set the fact that the plaintiff's solicitor said that, at the time when he recovered his judgment and afterwards, he did not suppose that A. G. Fulton, who managed the business of the partnership, had any real interest in the business. If he did not attach any importance to A. G. Fulton's connection with the firm, it was quite possible that a statement concerning the sale of his interest, and even some conversation about the good faith of the transaction, made and