

ditors, and it was deemed proper that where that had continued for five years, shewing a systematic course of conduct, a presumption of intent to defraud should arise, which, however, the accused might rebut in the manner mentioned in the section.

This construction, no doubt, would permit a man who had been in business for five years, and had for four years and eleven months failed to keep books of account, to escape liability of he were astute enough to keep them for the remaining month; but that is a matter for the consideration of Parliament.

As the section stands, it is an essential element of the offence that the person charged, for five years next before his inability to pay his creditors arose, should not have kept such books of account as were necessary to explain his transactions.

Conviction quashed.

SECOND DIVISIONAL COURT.

JANUARY 19TH, 1916.

*McKINNON v. DORAN.

Contract—Purchase of Bonds—Broker Becoming Purchaser—Agent for Sale—Fraud and Misrepresentation—Approval of Purchaser's Solicitor—Memorandum in Writing—Statute of Frauds—Certainty as to Subject-matter of Contract.

Appeal by the defendant from the judgment of CLUTE, J., 34 O.L.R. 403, ante 43.

The appeal was heard by FALCONBRIDGE, C.J.K.B., MAGEE, J.A., RIDDELL and LATCHFORD, JJ.

N. W. Rowell, K.C., for the appellant.

J. B. Clarke, K.C., for the plaintiffs, respondents.

MAGEE, J.A., read a judgment in which he said that the evidence fully warranted the finding that the defendant verbally agreed, on the 2nd June, 1914, to buy the bonds himself, and was not acting either as agent for the plaintiffs or ostensibly as agent for any disclosed or undisclosed principal in Ontario or elsewhere. The question was, whether there was a memorandum in writing of the bargain, signed by the defendant, sufficient to satisfy the Statute of Frauds, if that statute applied. There were numerous conversations, by telephone and vis-à-vis between the defendant and the plaintiffs, and also between him and Edmund Daude, his associate in New York, and between the latter and the plaintiffs; but it was to the letters and telegrams,