

The goods arrived at North Bay, it is said, about 15th October, but I find that they were not delivered to Murphy & Co. until 31st October, on which date a mortgage was made for the sum of \$6,207.84, being the total amount of the former mortgage and the amount of the invoice of the goods then supplied, executed by Elizabeth Murphy. Mrs. Murphy was then told of the prior mortgage having been executed by her husband, and she did not demur to its execution by him. However, the subsequent mortgage was given for the two amounts, and that constituted the then security to the defendant for the total amount of his indebtedness. This was in no way a voluntary mortgage. John Murphy, the manager, told Mr. Robinson that more goods were required to make the business a paying one, and that he was perfectly willing, if more goods were supplied, to secure the amount of the whole indebtedness; and, as all expenditures necessary had been made to the store, a paying business could be done. He found, however, that there were leakages in the business for which he could not account and the nature of which he was unable to discover.

As said in *National Bank of Australia v. Morris*, [1892] A. C. 290, "If a creditor who receives a payment or obtains a security has knowledge of circumstances from which ordinary men of business would conclude that the debtor is unable to meet his liabilities, he knows within the meaning of the Act that the debtor is insolvent."

In this case the only means of knowledge that the defendant had of Murphy & Co.'s position was in the statement furnished, and the statutory declaration annexed thereto of 17th September, and that, as I have already said, would shew a surplus of some \$1,219.

The defendant said he saw some goods of the plaintiffs there, but, seeing that Bell & Co. had already been paid the sum of \$457, he concluded that they were not then creditors of Murphy & Co., as he was not told by John Murphy of any liability to them. He was unaware that Bell & Co. were creditors.

The goods and chattels seized by the sheriff amounted to \$4,854.58, which were sold, by order of the Court and with the consent of the claimant, at 100 cents on the dollar, and, after deducting costs of seizure, poundage, and other expenses, would pay about 85 cents on the dollar on the plaintiffs' claim.