and 5 in the 2nd range south of the Durham Road in the township of Kinloss, in the County of Bruce, and to restrain the defendants from disposing or encumbering the same."

The defendant, Kennedy, showed by affidavit that there had been no sale of the said lands from him to Stewart; that a deed had indeed been drawn up and signed by him, and handed to Stewart, but with the understanding that Stewart should satisfy himself as to the title, and as to incumbrances, and the sale should only be carried out if these enquiries proved satisfactory; that, on enquiry, Stewart found four writs of execution against the lands of Kennedy in the Sheriff's hands, and thereupon sent back the deed, which had been cancelled, and refused to go on with the sale; that Kennedy had then taken steps to have these writs of execution set aside, and had succeeded in the case of three of them; that the fourth was the execution of the plaintiff in a County Court case against Stewart, and Kennedy had made a similar application to set this aside, which was pending, the Judge having heard the application, but reserved judgment.

In answer, the plaintiff produced the affidavit on which Kennedy was moving to set aside his execution, in which Kennedy admitted the debt due on the promissory note, on which the plaintiff was suing in the County Court; and also shewed that Kennedy had no other means wherewith to pay his claim, which would be endangered by vacating the *lis pendens*; and that the consideration in the deed from Kennedy to Stewart was $2,400, whereas the land was worth $3,000 or $4,000; and that Kennedy was apparently trying to realize on his property, and would return with the proceeds to Dakota, where he had been residing for two or three years past.

The motion was made before Mr. Dalton, Master in Chambers, on Feb. 27th, 1884, who, on March 3rd, 1884, gave judgment as follows: "It is not useful for me to consider this case particularly, for *Jamieson* v. *Laing*, 7 P. R. 404, must prevent me probably from granting what is asked. I, therefore, take the course suggested in that case of referring to a Judge, that the relief also there suggested may be given to the defendant if he be entitled."

On the same day the matter was again argued before Boyd, C.

H. J. Scott, Q.C., for the motion.—The plaintiff has no right to tie up the defendant's land in the manner he is attempting to do. It is an abuse of the practice of the Court. *Jamieson* v. *Laing*, 7 P. R. 404 is of doubtful authority. If the plaintiff's execution proves good there is no need of the *lis pendens*, at all events the plaintiff should be sent to a speedy hearing.

A. H. F. Lefroy, contra.—*Jamieson* v. *Lang* is an authority in our favour, but our case is a stronger one than that, for (1) we are at present, at all events, judgment creditors, with executions in the Sheriff's hands; (2) the defendant, Kennedy, admits our debt, and, therefore, on the principle that he who seeks equity should do equity, the *lis pendens* should not be vacated unless he pays into Court what he admits is owing. Moreover, admitting the debt as he does, this can scarcely be called an illusory and fictitious suit.

BOYD, C.—By the endorsement on his writ the plaintiff's claim is to "have a deed made between the defendant, Kennedy, and the defendant, Stewart set aside and cancelled, of lots 4 and 5 (giving description), and to restrain the defendants from disposing or encumbering same." It is further stated by endorsement that plaintiff sues on behalf of himself and of all other creditors of the defendant, Kennedy.

By virtue of this writ the plaintiff has registered a certificate of *lis pendens*, which the defendant now moves to vacate. There is no complaint of the insufficiency of the endorsement of claim, and it is not asked that the action should be dismissed, or the writ taken off the files as an abuse of the power of the Court. The motion is to vacate the registration of the *lis pendens*, on the ground that the action is illusory. Of this I am not so clearly satisfied that I will deprive the plaintiff of the chance of litigating as to the meaning of the transaction between the defendants. It may well be that nothing more happened than is detailed in their affidavits, but no suitor is obliged to submit to a preliminary trial of his case on affidavit. If the plaintiff chooses to go on to attack both defendants on the footing of there being a deed of the property from one to the other, which was intended to defeat and defraud creditors, he should not have his right to a trial intercepted in a summary way. I cannot, upon the materials before me, conclude the plaintiff by saying that his action is fictitious and illusory. He may be beaten at the trial, but my very strong impression is that he has the right to prosecute the litigation to that point, if he is so advised.

The endorsement on the claim may be developed into a statement of claim, which will show a valid cause of action against both defendants. At present no cause of action is clearly stated in the endorsement. It may be sufficient under R. 11, but my own view is that where the plaintiff seeks to register a *lis pendens* he should be more precise than