

Harcourt Ferguson, for the judgment creditor.

A. J. R. Snow, K.C., for the judgment debtor.

HON. MR. JUSTICE MIDDLETON:—The defendant was examined; and upon the first return of this motion it was admitted on his behalf that his examination was unsatisfactory. The matter stood, with the direction that the defendant should in the meantime submit to further examination. The further examination has now been had, and the motion is renewed; the judgment creditor contending that satisfactory answers have not yet been made, and that from the examination it appears that the debtor has concealed, or made away with his property.

The examination is in one sense not satisfactory. This is accounted for partly by the fact that the debtor is a foreigner, partly by the fact that he is an old man and garrulous, partly because he is suspicious of the examining counsel, and is not over-candid, and partly by the fact that he does not appear to have the details of his transactions clearly in his mind.

One cannot read the examination without being impressed by the idea that it is quite probable that Richardson was not a creditor, and that Richardson holds the money paid to him in trust for the debtor. Nevertheless, the judgment debtor has sworn to his indebtedness, and that the payment made to Richardson was in satisfaction of that indebtedness; and whatever suspicions one may entertain, and whatever view one might be inclined to give effect to if this evidence were the sole evidence upon the trial of an issue, I do not think it would be safe to say that from the statements made by the debtor it appears that a fraudulent disposition had been made of this property.

In the written argument handed in by counsel for the judgment creditor he says that what appears is "at least sufficient to raise a reasonable ground for the suspicion that the debtor has concealed his property or made away with it in order to defeat or defraud his creditors." This is fully as far as the evidence goes, and is not what the rule requires. I cannot commit because I have a reasonable suspicion; I must be prepared to find the fact.

The Richardson transaction appears to me to go beyond the others. Upon the examination I cannot find enough to lead me to a reasonable suspicion of the Douglas transaction.