

NOVA SCOTIA.

SUPREME COURT.

FULL COURT.

NOVEMBER 26TH, 1910.

BENTLEY v. MORRISON.

Debtor and Creditor — Husband and Wife — Separate Business Carried on by Wife—Insolvency—Unregistered Bill of Sale of Stock made by Husband — Sale of Stock by Mortgagee—Fraud on Creditors—Judgment—Execution.

Appeal from the judgment of LAURENCE, J., in favour of plaintiff, in an action to set aside a bill of sale and for an accounting, etc. Reported, 8 E. L. R. p. 456.

H. Mellish, K.C., in support of appeal.

T. S. Rogers, K.C., and H. McLatchy, contra.

RUSSELL, J.:—The facts of this case cannot be better presented than in the language of the learned trial Judge, who states the case as follows: "Lannis H. Betts in 1904 and previously carried on business as a general merchant at Wallace, N.S., under the name of 'L. H. Betts & Co.,' and becoming unable to meet his liabilities as they matured he assigned in that year (1904). The assignee sold his assets or stock in trade at public auction in the same year to one W. A. Fillmore, who purchased them, as I find, for and on behalf of Mrs. Annie M. Betts, the wife of Lannis H. Betts, who had on or about the 23rd day of March, 1904, obtained her husband's consent to do business in her own name, which license was filed on or about the same day, and on the 31st day of March, 1904, she registered a declaration of her intention to carry on business under the firm name of 'Betts & Co.' She being the sole member of such firm, and from that time the business of 'Betts & Co.' went on L. H. Betts managing the business under a power of attorney dated the same day, March 23rd, 1904, given by Annie M. Betts and 'Betts & Co.'"

The business of "Betts & Co." went on in this way until in 1907 it became indebted to various persons, among others the plaintiff, and also the defendant, D. A. Morrison, and in the fall of that year was unable to pay its liabilities as they fell due. Morrison having a claim of \$1,700, on the 4th of