

SELECTIONS.

matters of the assignment, if, upon a demand in writing served as therein specified, the moneys secured were not paid. Upon default of payment, the executors of Tyrrell, who had died, gave, in November, 1885, notice to the then debtors of the mortgagor of the assignment of the book-debts, and sold and assigned the said debts to the defendant in this action. The defendant thereupon gave notice of the assignment to him. On the 9th of January Izon was adjudged a bankrupt on a petition filed in December. The official receiver in this action sought to recover the amount of one of the book-debts which came into existence subsequently to the bill of sale, and had been paid to the defendant by the debtor since the bankruptcy. On appeal from the County Court Judge of Birmingham, who held, on the authority of *Belding v. Read* (34 L. J. Ex. 212) and *In re Count d'Epineuil* (20 Ch. D. 758), that the assignment of the future book-debts in the bill of sale was invalid, the Queen's Bench Division (Hawkins and Mathew, JJ.) ordered the judgment for the plaintiff to be set aside, and that the judgment should be entered for the defendant. "It was urged, by way of illustration," said Mathew, J., "that an assignment of all that a man might earn in future, or of all the goods a man might acquire during the rest of his life, would not be a good assignment, on the ground that it would be too indefinite. That may be so, because it may be said in such a case that there is nothing to show to what particular objects the assignment applies; but it does not appear to me that such cases are analogous to that now before us, because, although a future book-debt, cannot be said to be defined at the time when the assignment takes place, it sufficiently defines itself as soon as it comes into existence. There is no doubt that there may be a valid assignment of after-acquired chattels. In one sense such an assignment is indefinite, because the future chattel is not specified at the time of the assignment; but when a chattel comes within the description in the instrument, as, for instance, by being brought on a certain farm or place of business, as the case may be, the conveyance applies to it, and it becomes sufficiently defined. That is the effect of the

well-known decision in *Holroyd v. Marshall* (10 H. L. 191.) If future stock-in-trade may be assigned, why not future book-debts? The future stock-in-trade takes the place of, and is substituted for, the present stock-in-trade. The book-debt arises from the disposal of, and takes the place of, stock-in-trade present or future. When the book-debt comes into existence by the disposal of any portion of the stock, which as present or future stock was the subject of the assignment, why should not the assignment be valid and take effect as far as such debt is concerned?"

There was no answer to this reasoning—save that it did not apply. It would have been appropriate if the book-debts purported to be assigned were restricted to book-debts due to the mortgagor as packing-case maker, but the instrument went too far—all over the habitable globe, in effect, for what it affected to do was to assign all book-debts accrued in any business carried on by him in any part of the world. "Is such an assignment," said Lord Esher, M.R., "within the doctrine that where the description is vague nothing passes? That there is such a doctrine is assumed in all the cases; the difficulty in each has been as to its application. It is said that if in the end something arises which satisfies the description, the Court of Equity would decree specific performance, but I do not think that is so. As to vagueness, it would be difficult to find any description more vague than this." Not that it would be too vague to assign book-debts in a business carried on at a certain specific place, but when every business everywhere was included specific performance was out of the question. "We are asked," said Lindley, L.J., "to throw over the doctrine that there must be a case for specific performance. We cannot do so. Whether the assignment holds good depends on the question whether specific performance would have been granted. The reason is that you cannot in the nature of things assign that which is not in existence at the time. The most you can do is to agree to assign them." The learned County Court Judge was right. The assignment was clearly inoperative to pass such debts, and the plaintiff entitled to judgment.—L. J., Eng.