was a poison, and but ten or twelve drops must be taken, would naturally be somewhat startled. We should expect him to speak and manifest surprise, or at least seek the truth out of the contradictions. But this customer manifested none. He showed no curiosity. He asked no natural question. He did not say that a friend had taken ten times the doctor's dose with safety, and ask who was right or who was wrong, or if there was not somewhere a mistake as to the medicine. On the contrary, with the warning ringing in his ears, he quietly receives the medicine without surprise, allows his wife to pour nearly the whole contents into a spoon and says not a word to her of the information he had received ; does not tell her what the doctor said ; does not heed his warning ; relies upon the advice of an unskilled peddler, discarding that of the druggist and physician, and takes the fatal dose. It cannot be denied that this conduct matches naturally and exactly the line of action we should expect if no warning had been given, and does not appear so perfectly natural when confronted with the opposite theory. It tends, therefore, to throw doubt upon it, and to make one hesitate as to the truth, and when combined with the palpable interest of the clerk to shield himself and his employer makes a case in which there is a possibility of different and debatable inference from the evidence given, and so developes a question of fact rather than of law. In *Elwood* v. *Western Union Tel. Co.*, 45 N. Y. 553, it was said that the rule that where unimportant witnesses testify positively to a fact and are uncontradicted, their testimony must be credited, is subject to many qualifications, and among them this, that the interest of the witness may affect his credibility, and it was added, upon the facts of that case : "Such evidence as there is proceeds wholly from parties having an important interest in the question. Each of them, if guilty of the negligent act, would have the strongest motive to deny it, as the admission would subject him or her to severe responsibilities for the consequences. This is a controlling consideration in determining whether the statements of these witnesses should be taken as conclusive." To a similar effect are other cases. *Kavanagh* v. *Wilson*, 70 N. Y. 177 ; *Gildersleeve* v. *Landon*, 73 N. Y. 609. The General Term were, therefore, right in saying that the case should have been submitted to the jury.

The judgment should be affirmed and judgment absolute rendered in favour of the plaintiff upon the stipulation, with costs.

Wm. C. De Witt, for appellant.

Samuel Greenbaum, for respondent.

—*Central L. J.*, July 20.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

[June 29.

DRISCOLL v. GREEN.

Chattel mortgage—Affidavit of debt.

In November, 1881, a chattel mortgage was made to secure the plaintiff as indorser of a promisory note of the mortgagor, dated 4th October, 1881, at two months. A recital in the instrument stated that it had been given "as security to the mortgagee against his endorsement of said note, or any renewal thereof that shall not extend beyond one year from the date thereof ; and against any loss that may be sustained by him by reason of such endorsement of said note, or any renewal thereof." The affidavit stated it was made "for the express purpose of securing the mortgagee against the payment of such his liability for the said mortgagor by reason of the promissory note therein recited, or any future note or notes which he may endorse for the accommodation of the mortgagor, whether as renewals of the said note or otherwise."

Held, reversing the judgment of the Court below, that as the mortgage itself was good, and the affidavit covered all that is required by the Act, that part of the affidavit from "or any future note" to the end was unnecessary, as far as creditors were concerned, and could not vitiate the security.

H. J. Scott, for appeal.

Gibbons, contra.

LOWSON v. CANADA INSURANCE CO.

Immediate execution—Practice.

Held, reversing the decision reported 9 P.R. 185, that R.S.O. ch. 161, sec. 61, as to Mutual Insurance Companies, providing that no execu-