LOAN SECURED BY A CHARGE UPON ALL THE BORROWER'S PROPERTY.—Some thirty years ago, a farmer of Kent County in England borrowed £2,500 from a widow, and as security for the repayment of the loan he gave her a written memorandum in which he charged "all his real and personal estate whatsoever and wheresoever, and of what nature or kind soever, the same may be or consist." When he died, twenty-eight years later, he had reduced the debt to £500, and had paid all interest, and the chief asset left behind was a policy of assurance for £1,000 on his own life, which had been effected before he borrowed the widow's money. In the administration of his estate, the widow claimed to be paid in full out of the insurance moneys. This claim was resisted by the other creditors, and the pros and cons were argued before Mr. Justice Kekewich, of the Chancery Division. Against the widow it was contended, that the charge should not be enforced: (1) Because it was not confined to property existing when it was made; (2) It was too vague and indefinite; (3) It is against public policy to enforce a charge extending to every item of the borrower's property, even to the clothes on his back, preventing him from paying his debts and depriving him of the means of subsistence, and (4) On the ground of its secrecy, which enables a fictitious credit to be maintained. In the course of a judgment, which directed the widow's debt to be paid in full out of the policy moneys, the learned judge said:—

"Notwithstanding the novelty of the point, in the sense of absence of decision, I do not think that any useful purpose would be answered by further argument. (The widow's counsel was not called upon to reply). I say novelty in the sense of absence of decision, because, though the point has been discussed again and again as an abstract question, it has never been decided whether a mere charge for valuable consideration on all the real and personal property of the person receiving the consideration is good so as to be enforceable in a court of law or equity. I think we are free from any question whether future property is included or not. Though there are some words that might be construed to include future property, the words, as a whole, seem to me to point more directly to property existing at the date of the charge only. I think clearly that a contract of this kind cannot be attacked upon the ground of indefiniteness. If it is possible to discover its meaning by construction, and to ascertain when the time for enforcement comes, to what property the charge attaches, it cannot be said that it ought not to be enforced, because it is too vague, or even because there might have been a difficulty in ascertaining the property at the time of the creation of the charge. In answering the argument, that it is against public policy, it is well to keep forcibly before one's mind the well-known dictum of Judge Burrough, expressed in 1824, to the effect that "public policy is a very unruly horse, and when once you get astride if you never know where it will carry you." There is certainly no law that a man may not create a charge on all his real and personal property. He may do so by proper deeds in a proper way; it may be that a registered bill of sale or other documents are necessary, but it can be done. And to say that that which can lawfully be done in one way cannot be done in a different way, because it is against public policy, seems to me a dangerous argument. I think it would be going a great deal too far to say that this charge is not good on the ground of secrecy. The same would be true of a great many other instruments, including the common case of a marriage settlement, which is locked up in a family box, kept in a solicitor's office or muniment-room, and never seen until it is called for by the urgency of the case. It may be that it would be a great advantage that charges of this kind should not be allowed to take effect; that is to say, that there should be a register of all charges on all property, and that fraud should be thereby rendered, as far as can be, impossible; but hitherto that has not been the policy of English law, except to a very small extent. We have no authority for saying that a charge of this kind is not permissible. In re Kelcey (1899), 2 Ch. 530.