

J. G. Kerr, for the plaintiff, appellant.

O. L. Lewis, K.C., and S. B. Arnold, for the defendant, respondent.

HON. MR. JUSTICE SUTHERLAND:—This action arises out of a sale by the plaintiff to the defendant of certain chattel property in the "Temple Theatre" in the city of Chatham, used in connection with a moving picture "show." The owner of the building was one Eva M. Brisco whose husband, Fred H. Brisco, acted as her agent in connection with the leasing of the building. Originally one White had been the tenant and later, one Geo. O. Phillip. Frank E. Baxter associated with Phillip, and on the 15th May, 1912, a lease was made to them by Eva M. Brisco for a term of two years and five months at a weekly rental of \$21.05. A sum of \$500 had been deposited by Phillip with Mrs. Brisco to guarantee the payment of the rent. Soon after the said lease was made, Baxter bought Phillip out and no assignment of the lease was made as the landlord apparently desired to hold Phillip and his \$500 to secure the rent. On the 1st November, 1912, Baxter sold to the plaintiff under the following document—

"Chatham, 1st November, 1912.—I hereby assign over to Fred Baxter all my interests in the Temple Theatre for valuable consideration, including the articles mentioned in bill of sale, Phillip to Baxter, the lease to remain in my name, but he to have full and complete possession of the premises after the Saturday night (2nd November), performance."

The consideration is said to have been \$900.

Little, the defendant, had apparently been a patron of the theatre and knew something about it. On the night of the 2nd November Baxter, acting for Bates, made a sale to the defendant, and it is said a brief memorandum was made and executed that night, but it was not produced at the trial. The defendant testified that he thought he was dealing only with Baxter, the owner, but admits Bates' name was mentioned. Baxter says he explained to him that he had sold to Bates, who was selling to the defendant, and the solicitor Mr. Gundy, who prepared the papers on the following Monday, says that Little, Baxter and Bates all came to his office for that purpose, and it was explained