

Pursel fell into arrears in his payments to the plaintiff for supplies of liquors and other things; and, for some time before the business at Simcoe was given up, the plaintiff was selling to him for cash only, was pressing him for payment of his old balance, and was collecting from him \$50 a week on account of it.

In August, 1916, the plaintiff sued and entered judgment against Pursel for \$1,186.16 and costs.

In 1916, Pursel was doing a large business over his bar. In May of that year he began to make deposits to the credit of his wife's savings account, depositing between the 7th May and the 7th August \$2,867.90. These deposits were, the learned Judge thought, intended to be repayments to the defendant on account of her loans, which, with interest at 5 per cent., amounted at that time to approximately \$2,725. No doubt, they were intended to give her a preference over the plaintiff; but, even so, the transaction was unimpeachable if she was a creditor, as the learned Judge thought she was, and if the deposits were payments of money to her within the meaning of sec. 6 (1) of the Assignments and Preferences Act, R.S.O. 1914 ch. 134. Payments of money to a creditor's banker seemed to the learned Judge to be payments of money to the creditor within the meaning of the Act; but some of the deposits were of cheques for various small sums, amounting in all to \$762.90, and these cheques were not money within the meaning of the Act: *Davidson v. Fraser* (1896), 23 A.R. 439, affirmed in *Fraser v. Davidson and Hay* (1897), 28 Can. S.C.R. 272; and therefore the transaction, in so far as the cheques were concerned, could not be supported. The reasoning of the case cited was just as applicable to a cheque payable to bearer and held by the debtor as to a cheque payable to the debtor.

The transaction was, therefore, valid so far as the moneys deposited were concerned; aliter as to the cheques.

The defendant bought a motor-car, a pop-corn machine, a moving picture business, and a house in Leamington. Such payments as she made on account of the first three were made out of the moneys which she had to her credit in the bank, and these moneys constituted a fund in which the proceeds of the cheques had become inextricably mixed with moneys of her own. The payment which she made on account of the purchase of the house was made by handing over the pair of horses, valued at \$200, which Pursel had given to her; and the gift of which could hardly stand as against creditors.

The learned Judge thought, therefore, that 13 (2) of the Assignments and Preferences Act entitled the plaintiff to the declaration which he asked; that the defendant's interest in the property mentioned was available for creditors, as was also the sum of