

defendant Dufresne sold to the other defendant Gilmour "the whole of his stock of paints, oils, varnishes, tins, tin-cans, barrels and machinery for manufacturing paints and mixing the same, and all tools used for the same, and the business owned and carried on by the said Dufresne in the township of Stanbridge as well as in the city of Montreal, and all the fixtures, counters, shelvings, tables, office furniture, horses, buggies, express waggons, sleighs, and everything including furniture generally, belonging to and used by said Dufresne in the prosecution of the said business, and also the book debts and accounts of said business."

The declaration alleges that the goods so sold comprised all the movable property which Dufresne possessed; that Dufresne was not indebted to Gilmour at the time in the sum of \$15,000, the alleged purchase price of said property; that such sale was made for the purpose of defrauding plaintiffs and that it had the effect of injuring them; that Dufresne continued afterwards in possession; that none of the property was delivered to Gilmour; that the same day, 25 August, 1888, Dufresne gave Gilmour a hypothec on certain real property for \$3,000; that on the 17th September following, Dufresne made an abandonment of his estate for the benefit of his creditors, Gilmour appearing in the statement of liabilities as a creditor for \$10,000; that by means of said sale and hypothec Gilmour became the owner of all the movables of Dufresne, and hypothecary creditor for at least the value of his immovables; that notwithstanding said sale, the statement made under oath by Dufresne of his assets contains an enumeration of the very property claimed to be sold to Gilmour; that Dufresne had no other movable property than that mentioned in the deed of sale, and that his immovables were hypothecated for more than their value; that the sale was fraudulently made and with the intention of defrauding; that it had the effect of injuring plaintiffs, creditors of Dufresne, and was made by Dufresne for the purpose of paying Gilmour in preference to his other creditors, and that thereby plaintiffs are prevented from exercising their recourse against said movable property and from sharing the pro-

ceeds thereof with the other creditors of Dufresne.

Gilmour, severing in his defence from Dufresne, who has not appeared, pleads a general denial, and specially that he bought the property mentioned in the deed of sale for good and valid consideration as therein set forth; that at the time Dufresne was solvent, and that he, Gilmour, believed him to be so, and that throughout he acted in good faith relying upon the representations of Dufresne.

The plaintiffs have examined twelve witnesses apart from the two defendants. Dufresne having gone to the States shortly after making his abandonment, was examined there under a commission, and Gilmour has called two of those who had already been examined by the plaintiffs.

There is not much controversy between the parties regarding the principal facts which result from the evidence; but they entirely disagree as to the conclusions deducible from them. It would appear that some time prior to the summer of 1888, Dufresne had established at Bedford a paint manufactory, and had opened in Montreal a store to which the manufactured paints were sent for sale, and that Gilmour had been in the habit of making advances to Dufresne to enable him to carry on his business, as well directly as by discounting the notes and drafts of customers. On the 25th August, 1888, Dufresne was indebted to Gilmour (as appears by the latter's statement marked "A") in the total sum of \$38,342.29 composed as follows:

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| Obligations | \$ 5,743.25 |
| Notes | 26,479.63 |
| Drafts | 6,119.41 |

And to the plaintiffs and others he was at the same time indebted to about the sum of \$39,000, making in all a total indebtedness of about \$77,000. A portion of this was indirect, arising from drafts and endorsements of paper of customers and others, and a portion was not then due. It is unnecessary now to enter into a consideration of the relative proportion of direct and indirect liabilities then due and exigible. According to Gilmour's said statement, Dufresne was then directly liable for debts due to various persons in the sum of \$3,140.41; and table 4 of said statement shows that he then had