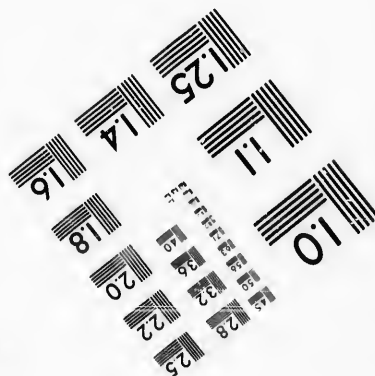
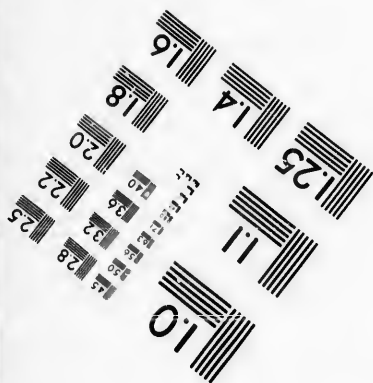
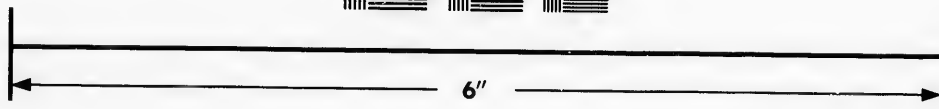
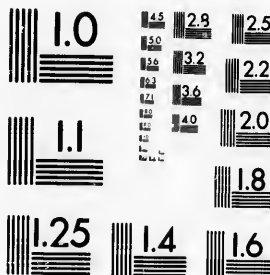


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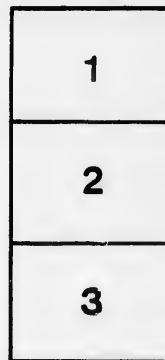
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IN THE
Supreme Court of Canada

Appeal from the Judgment of the Court of Appeal for Ontario.

BETWEEN

BURNS & LEWIS, on behalf of themselves and all other creditors of the defendant Cheyne,
Plaintiffs,

AND

ELIZA BARNET CHEYNE, JAMES D. WILSON,
AND THE W. E. SANFORD MANUFACTURING
COMPANY (Limited),
Defendants.

AND BETWEEN

BURNS & LEWIS, on behalf of themselves and all other creditors of the defendant Eliza Barnet Cheyne,
Appellants,

AND

JAMES D. WILSON, AND THE W. E. SANFORD
MANUFACTURING COMPANY (Limited),
Respondents.

GIBBONS MULKERN & HARPER,

Solicitors for Appellants.

T. B. MARTIN, ESQ.,

Solicitor for Respondent Wilson.

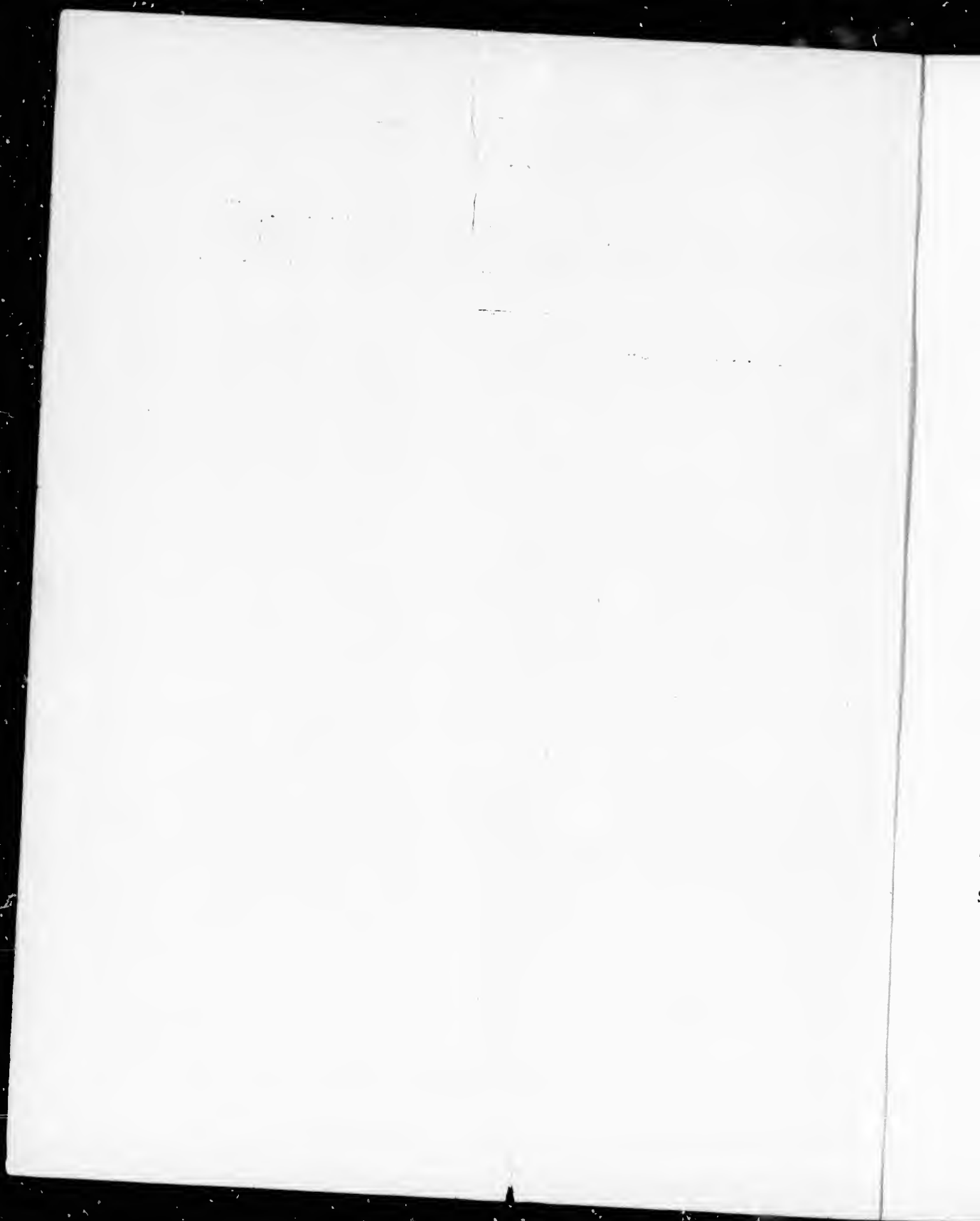
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Solicitors for Respondents The Sanford Co.

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1897.



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T. B. MARTIN, ESQ,

Solicitor for Respondent Wilson.

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1897.





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BURNS vs. CHEYNE.

SUMMARY OF PROCEEDINGS.

- Writ issued 15th November, 1895.
- Statement of Case.
- Order made on Motion for Injunction.
- Pleadings.
- Trial.
- Judgment.
- Exhibits.
- 10 Judgment as entered.
- Notice of Motion to Court of Appeal.
- Reasons for Appeal
- Reasons against Appeal.
- Judgments of Court of Appeal.
- Certificate of Court of Appeal.

STATEMENT OF CASE.

This is an action brought to have it declared that a certain chattel mortgage made by the defendant Eliza Barnet Cheyne, to the defendant James D. Wilson, was made with the intent to defeat, delay and hinder the plaintiffs and the other creditors of the defendant Cheyne
20 generally, and with intent to give a preference to The W. E. Sanford Manufacturing Company (limited).

The action was tried before The Honorable The Chancellor on the 16th and 17th days of April, 1896, who dismissed the same without costs. The plaintiffs appealed to the Court of Appeal for Ontario against such judgment, and the said appeal was, on the 11th day of May, 1897, dismissed with costs, from which judgment the plaintiffs now appeal to the Supreme Court of Canada.

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ORDER MADE ON MOTION FOR INJUNCTION.

In the High Court of Justice,

Common Pleas Division.

THE HONORABLE
MR. JUSTICE MEREDITH.

Tuesday, the third day of
December, 1895.

BETWEEN

BURNS & LEWIS, on behalf of themselves and all
other creditors of the defendant, Eliza Barnet Cheyne,
Plaintiffs.

AND

ELIZA BARNET CHEYNE, JAMES D. WILSON,
AND THE W. E. SANFORD MANUFACTURING
COMPANY (Limited).

Defendants.

Upon motion this day made unto this Court by Mr. Gibbons, Q. C., of counsel for the plaintiffs, for an order and injunction restraining the defendants, or any of them, from transferring, selling, or disposing of a certain stock-in-trade of dry goods and ready-made clothing, situate at 73 King Street East in the City of Toronto, and mortgaged by the defendant Cheyne to the defendant Wilson, by indenture dated the first day of November, 1895, until after the trial
20 or other disposition of this action, in presence of counsel for the defendants; upon hearing and reading the affidavits filed in support of and in opposition to the said motion, and the depositions of William Lees, Joseph J. Greene, W. S. Duffield, Robert Cheyne and James D. Wilson, taken for use on the motion, and the defendant Wilson, by his counsel aforesaid, hereby undertaking not to take proceedings under the above mentioned mortgage until the trial of this action, or if proceedings are taken to keep an account of and hold the proceeds of the sale of the said goods and chattels subject to the further order of this Court.

1. This Court doth order that the said motion be and the same is hereby adjourned until the trial or other determination of this action.

2. This Court doth further order that the plaintiffs do enter this action for trial at the next
30 sittings of this Court for the trial of actions at the City of Hamilton.

3. And this Court doth further order that the costs of this motion be reserved, to be disposed of at the trial or other determination of this action.

(Sgd.) A. F. MACLEAN,
Clerk Weekly Court.

Entered Dec. 6th, 1895.
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In the High Court of Justice,

Common Pleas Division.

WRIT ISSUED 15TH NOVEMBER, 1895.

BETWEEN

BURNS & LEWIS, on behalf of themselves and all
other creditors of the defendant Cheyne,
Plaintiffs.

AND

ELIZA BARNET CHEYNE, JAMES D. WILSON
AND THE W. E. SANFORD MANUFACTURING
COMPANY (Limited),

Defendants.

STATEMENT OF CLAIM.

1. The plaintiffs are wholesale manufacturers of clothing, carrying on business at the City of London, in the County of Middlesex.
2. The defendant Eliza B. Cheyne is, and has been for some months, carrying on business at the City of Toronto as a retail dealer in clothing.
3. The defendant Cheyne is indebted to the plaintiffs in the sum of \$1,342.90 and upwards for goods sold and delivered by the plaintiffs to her.
- 20 4. That on or about the first day of November, A. D. 1895, the defendants, the Sanford Company, an incorporated company, carrying on business at the City of Hamilton as wholesale manufacturers of clothing, being creditors of the defendant Cheyne to the amount of \$4,700 or thereabouts, applied to her to make an assignment for the benefit of her creditors, she being at the time wholly unable to meet her liabilities as they matured, and being wholly insolvent, as the defendants, the Sanford Company, well know.
5. The defendant Cheyne refusing to make the said assignment, the said Sanford Company persuaded and induced her to execute a chattel mortgage to the defendant Wilson on the first day of November, A. D. 1895, to secure the sum of \$4,775 upon all her stock-in-trade, situate in the store occupied by her in the said City of Toronto.
- 30 6. That the said chattel mortgage was made with the intent to defeat, delay and hinder the other creditors of the defendant Cheyne, with the full notice and knowledge of the defendants Wilson and the Sanford Company.

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7. The defendants the Sanford Company, gave to the defendant Wilson a bond of indemnity to secure him against loss in respect of the said alleged advance.

8. The defendant Wilson had never seen the stock upon which the said alleged advance was made, nor did he know the defendant Cheyne, nor had he ever heard of her, but he made the said advance with full knowledge of the intent aforesaid.

The plaintiffs seek :

1. Judgment against the defendant Cheyne in the sum of \$1,342.90, and interest from the 1st November, 1895.

10 2. To have it declared that the said chattel mortgage to the defendant Wilson was made with intent to defeat, delay and hinder the plaintiffs and the other creditors of the defendant Cheyne, and with intent to give a preference to the defendants the Sanford Company, with the knowledge of the defendant Wilson.

3. To have it declared that the same is null and void ; or,

20 4. That it may be declared that the defendant Wilson took the said chattel mortgage as and for the defendants the Sanford Company, and that he holds the same as their agent and in trust for them, and that the said chattel mortgage may be set aside as being a fraudulent transfer to the defendants the Sanford Company, by way of preference over the other creditors of the defendant Cheyne.

5. For an account of the dealings of the defendants under the said security and payment over of the amount realized thereunder for the general benefit of creditors of the defendant Cheyne.

6. For such other relief as the plaintiffs may be held entitled to.

7. And for costs of suit.

The plaintiffs propose that this action should be tried at the City of Toronto.

Delivered this 10th day of December, 1895, by Messrs. Gibbons, McNab & Mulkern, of the City of London, in the County of Middlesex, solicitors for the plaintiffs.

STATEMENT OF DEFENCE

30 OF THE DEFENDANT JAMES D. WILSON.

1. The defendant James D. Wilson admits all the allegations contained in the first and second paragraphs of the Statement of Claim, and denies all the other allegations contained in the said Statement of Claim, and puts the plaintiffs to the proof thereof.

2. This defendant says that he advanced his money to the defendant Eliza Barnet Cheyne in good faith, and without knowledge that the defendants the W. E. Sanford Company (limited) were creditors of the said Eliza Barnet Cheyne, or were in any manner interested in the said transaction.

3. This defendant denies that the defendants The W. E. Sanford Manufacturing Company (limited) gave to this defendant a bond of indemnity as alleged in the Statement of Claim.

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4. This defendant says that the mortgage referred to in the Statement of Claim has been paid and satisfied.

This defendant submits that this action should be dismissed with costs.

Delivered this 23rd day of December, A. D. 1895, by Thomas B. Martin, of the City of Hamilton, in the County of Wentworth, solicitor for the defendant James D. Wilson.

STATEMENT OF DEFENCE

OF THE DEFENDANTS THE W. E. SANFORD MANUFACTURING COMPANY
(Limited).

1. These defendants admit the statements in the first and second paragraphs of the plaintiffs' Statement of Claim, and deny all other allegations therein, and put the plaintiffs to the proof thereof.

2. These defendants, on or about the 30th day of October last, were creditors of the defendant Eliza Barnet Cheyne for upwards of \$4,700; and believing that she was solvent and that the other creditors had claims for small amounts only, and that owing to the action which said creditors were likely to take, the affairs of the defendant Eliza Barnet Cheyne would become involved, these defendants requested the defendant Eliza Barnet Cheyne to execute an assignment for the benefit of creditors in order to prevent loss to these defendants, but she declined to execute such assignment.

3. These defendants deny that they gave to the defendant Wilson a bond of indemnity to secure him against loss.

4. These defendants say that the said mortgage is no longer a charge upon the stock-in-trade mentioned in the Statement of Claim.

These defendants submit that this action should be dismissed with costs.

Delivered this 23rd day of December, A. D. 1895, by Messrs. Scott, Lees & Hobson, of the City of Hamilton, in the County of Wentworth, solicitors for The W. E. Sanford Manufacturing Company (limited).

REPLY.

The plaintiffs join issue on the Statement of Defence of the defendants James D. Wilson and The W. E. Sanford Manufacturing Company (limited).

Delivered the 26th day of December, 1895, by Gibbons, McNab & Mulkern, of London, plaintiffs' solicitors.

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TRIAL.

Evidence taken before The Chancellor at Osgoode Hall, non-jury sittings, April 16th, 1896.

GIBBONS, Q.C., and MCINTOSH for plaintiffs.

RITCHEE, Q.C., for Defendant Wilson.

C. D. SCOTT for Sanford Manufacturing Company.

JOSEPH JOHN GREENE sworn.—Examined by Mr. Gibbons.

Q. I believe you are Secretary of the Sanford Manufacturing Company? A. I am.

Q. You did business with Miss Cheyne? A. We did.

Q. Who carried on clothing business in Toronto? A. Yes.

10 Q. When did that business commence? A. We commenced to do business with them, I think, in March, a year ago.

Q. That is March, 1895—that was the commencement of the business, was it not? A. I think it was.

Q. Has Miss Cheyne any capital? A. She is worth something outside of the business.

Q. Small, I believe? A. I don't think she is worth a great deal.

Q. Very small, I think you told me before? A. Not a large amount.

Q. Did you ever hear the amount? A. No.

Q. She purchased mainly upon credit? A. Yes.

Q. And purchased largely from the Sanford Manufacturing Company? A. Yes.

20 Q. You became uneasy, I believe, in October, 1895? A. Yes.

Q. What had you heard to make you uneasy? A. I heard that certain creditors were taking action—legal action.

Q. Were about to sue for their claims? A. Yes.

Q. Were likely to bring action on overdue notes? A. I suppose it was.

Q. Other wholesale houses, were they? A. Yes.

Q. What did you do in consequence of hearing this? A. I sent down our Mr. Duffield to Toronto.

Q. Who is the manager of this business—this Miss Cheyne business? A. Mr. Cheyne.

Q. What is his first name? A. I don't know.

30 Q. Her father, at any rate? A. Yes.

Q. And in consequence of Mr. Duffield's visit did Mr. Cheyne come up? A. He came up.

Q. Representing his daughter? A. Yes.

Q. What had Mr. Duffield gone down to do? A. To secure an assignment from him if possible.

Q. An assignment for the benefit of creditors? A. Yes.

Q. You had become dissatisfied with the running of the account? A. We objected to an extension, yes.

Q. They had been unable to meet their payments? A. He had not been paying as he had arranged to do.

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- Q. And you came to the conclusion that the best thing to be done was to take an assignment for the benefit of creditors? A. Yes.
- Q. That was talked over before Mr. Duffield went down? A. Yes.
- Q. Did he get the assignment? A. No.
- Q. Mr. Duffield returned. Did Mr. Cheyne come to Hamilton then? A. Yes.
- Q. Was that at your request? A. No.
- Q. Mr. Duffield's request? A. No, I think not.
- Q. Just by accident he came? A. Voluntarily, yes.
- Q. Not having been requested to come? A. Not that I am aware of.
- 10 Q. What occurred then? Did you then discuss the question of assignment with him?
A. Yes, I did.
- Q. He did not want to assign? A. No.
- Q. Then there was a suggestion of a chattel mortgage? A. There was.
- Q. Who did that suggestion come from? I see Mr. Lees says, in his examination, it came from him—is that so? A. I believe so.
- Q. Who is Mr. Lees? A. He is a solicitor in Hamilton.
- Q. You had consulted him in the meantime? A. Yes.
- Q. And told him of Mr. Duffield's visit to Toronto? A. No, I don't think I did.
- Q. Told him about your endeavors to get an assignment? A. No, I am not sure that I did.
- 20 Q. What did you tell him, then, when you consulted him? You had been endeavoring for a couple of days to get the assignment, both in Hamilton and Toronto, and then you went to consult Mr. Lees—did you tell him what you had been doing? A. I told him that we wanted to get our money.
- Q. Did you tell him Mr. Duffield had been down to Toronto with a view of procuring the assignment? A. I believe not.
- Q. Did you tell him that you had been discussing during the day there with Mr. Cheyne as to procuring an assignment? Did you tell him at any rate what you had been doing up to that time? A. No, I believe not; not concerning the assignment.
- Q. So how did he come to make the suggestion to you about the chattel mortgage. What 30 led up to that? A. I saw Mr. Lees before Mr. Cheyne came up and mentioned the facts to him.
- Q. What facts? A. I mentioned the facts I have mentioned, concerning the condition of the account and our desire to get payment for it, and asked him what was to be done.
- Q. And what did he say? A. He thought that it might be possible that a loan might be effected on the stock if matters were satisfactory.
- Q. Did he tell you that he had done such things before? A. Not that I remember.
- Q. Will you say he didn't? A. I am not aware that he did at that time.
- Q. I asked you before about this assignment. (Question 69, read), "Q. He knew that you were asking Cheyne to make an assignment; you asked him in his presence? A. Yes, he knew. I think he knew I had asked him for that." Is that so? A. The answer there indicates 40 that I was in doubt.
- Q. Have you discussed it with Mr. Lees since? A. Yes.
- Q. And he says that the assignment was not mentioned? A. He does.
- Q. So that is the reason you changed your view on that subject, is it? A. Not necessarily. The circumstances were a little peculiar.
- Q. You still think now, although you answered then, "Yes, he knew," you say now, after discussing with Mr. Lees, that you are not certain about it—is that it? A. I am not certain about it.

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Q. You think you discussed with Mr. Lees the taking of the chattel mortgage, without telling anything that led up to it—about the trip of Mr. Duffield and the solicitors to Mr. Cheyne's house? A. Not without telling him a certain amount.

Q. What part did you tell him? A. I am not just sure what I did tell him.

Q. Now Mr. Greene, have you any doubt in your mind that you naturally would tell Mr. Lees what had been done—Mr. Sweet and Mr. Duffield had come over together and gone to Mr. Cheyne's house with a solicitor, Mr. Kappelé? A. I don't think Mr. Sweet came down. Mr. Duffield came alone.

Q. And did they go up with a solicitor to Mr. Cheyne's house, and they came back and reported? A. Yes.

Q. Is it likely or unlikely that you would tell this to Mr. Lees? A. I don't think it is necessary that I should have told him. The conversation with Mr. Lees was rather hurried.

Q. What hurried it? A. I just went and saw Mr. Lees before Mr. Cheyne arrived at our office.

Q. How did you know he was coming to your office? A. Mr. Duffield told me he was coming.

Q. You told me a few minutes ago he came of his own accord, and had not been asked to come? A. Yes; he may have said or told Mr. Duffield when he was coming up.

Q. Something was then suggested by Mr. Lees that it might be that a chattel mortgage could be given on this stock and the money applied in payment of your claim; is that it? A. Yes.

Q. Whom did he suggest would supply the money? A. I don't think he suggested anyone, or mentioned any name at the time.

Q. How did he speak of him? You told me before. Have you got a little memorandum book in your pocket in connection with this suit in any way? A. No.

Q. Has it anything to do with this suit—the memorandum book you have in your pocket? A. No.

Q. No entries in connection with the suit? A. No.

Q. Who did he tell you that he thought would advance this money? A. I don't think he told me.

Q. Before, you said, he said he was a client of his? A. I am not prepared to say that that was the case.

Q. You discussed with Mr. Lees this evidence in which you said, "He said he was a client of his"? A. I am not sure that we talked on that particular point.

Q. Then he told you that he was not a client of his, did he? A. No, I won't say.

Q. Who did he say would advance the money? A. He did not say on that day.

Q. Did he say a client of his? A. No, he didn't.

Q. What made you change your mind since that examination? A. As far as that was concerned I naturally suppose any one that he could secure the money from was a client of his.

Q. Before, you said, "He said a client of his." A. I cannot remember whether he mentioned any name.

Q. Did Mr. Lees come down with you to see Mr. Cheyne when he arrived? A. No, he came down himself afterwards.

Q. By appointment? A. Yes.

Q. You had arranged to have him come? A. No, we telephoned him to come down.

Q. Did he suggest this chattel mortgage to Cheyne, or had you suggested it in the meantime?

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A. I may have said to Mr. Cheyne—asked him the question—if a loan could be secured would he be willing to pay our account off.

Q. A loan by way of chattel mortgage? A. Yes.

Q. Did you tell him what effect that would have as to these pending suits? A. No.

Q. Did you discuss the effect of the chattel mortgage on the suits that were pending?

A. Not to any extent.

Q. To what extent did you? A. It may have come up incidentally.

Q. Any discussion about the other creditors who were sued; the whole object of this, as you have told us, was to protect yourself against these creditors, was it not? A. No, no.

10 Q. That was one object? A. Not the object.

Q. That was one object? A. No, I don't say that it was an object.

Q. Did you discuss with him then what the effect of the chattel mortgage would be as regards these other creditors, or have you forgotten that? A. No, I haven't forgotten it.

Q. Then did you discuss it with him? A. No, not particularly.

Q. Did you discuss it with him generally? A. I may, or the matter might have been mentioned in course of conversation. But he understood the effect of the chattel mortgage precisely the same as I did.

Q. Was there anything said about the result and the effect of the chattel mortgage, that the other creditors would be unable to touch this stock? A. No, not in so many words.

20 Q. In substance? A. In substance it may have been.

Q. Was it? A. I presume it was.

Q. Did Mr. Lees, in your presence, tell him that he had an exactly similar case—Gibbons vs. Wilson, mentioning it by name—and that the other creditors might kick as much as they liked, they could do nothing? A. That is new to me.

Q. Was that said in your presence? A. Not to my knowledge. I will say, not to my knowledge it was not.

Q. Was there any discussion by Mr. Lees about another case—did he mention another case? A. Not in the presence of Mr. Cheyne, that I remember.

Q. Did he mention it to you? A. He did subsequently.

30 Q. At that time? A. No.

Q. When he was giving you the advice did he say anything about the case of Gibbons vs. Wilson? A. No, not that I remember of.

Q. You knew this is the same Wilson—you know now? A. I did not know anything about it at the time.

Q. If Mr. Cheyne says that in your presence, as assuring Mr. Cheyne that it would be all right—that the other creditors could not touch this stock, that he referred to the case of Gibbons vs. Wilson, and said they might kick as much as they like, but they could not do anything—will you deny it, if Mr. Cheyne says that? A. Yes, I will deny it as far as my knowledge goes. There was no discussion of that nature—not to my knowledge.

40 Q. What was this discussion that took place? A. The inducement held out to Mr. Cheyne was that he would continue business and we would supply him with goods.

Q. And the other creditors could not touch the stock? A. That was a mere incident as far as we were concerned.

Q. Was not that the inducement held out at the time? A. I say not.

Q. Was not it discussed at all? A. I say the matter may have been incidentally mentioned but it was not dwelt upon by me as any inducement; it was brought up by himself.

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Q. Not by you in any way? A. No, not that I remember.

Q. It was discussed in your presence was it not? A. I admit that it was incidentally mentioned as the effect rather than the inducement. The inducement to carry on business was the first.

Q. Could there be any stronger inducement held out to this man, to give you a preference over his other creditors, than that he was to be enabled to carry on business and the stock was to be protected? A. I say the inducement to carry on his business was the first.

Q. Who were the creditors who were mentioned? A. I heard the names of three or more mentioned.

10 Q. That was a very important factor, what was to be done with those other creditors? A. It may have been to him.

Q. And to you? A. Not necessarily.

Q. Was not it an important factor to you that the stock could not be touched by these creditors? A. He may have understood it.

Q. Didn't you understand it—now, Mr. Greene? A. I understood it, certainly.

Q. Have you any doubt that Cheyne understood it? A. I have no doubt that Cheyne understood it.

Q. Is there any doubt that this was the inducement that Mr. Lees was holding out and you were holding out to him? A. I certainly have doubts.

20 Q. You have read your examination over pretty recently? A. I read it over last week. I had a copy of it for a little while and read it over Saturday evening and then gave it back.

Q. Have you read it since? A. No.

Q. Did you take any memorandum from it? A. No.

Q. You did not read it to-day, or any part of it? A. I looked at it.

Q. You did not read it; what did you look at it for? A. Just glanced at it.

Q. Didn't read it? A. No, not the whole of it.

Q. Parts of it? A. Yes.

Q. Did Mr. Cheyne agree then to give the chattel mortgage or not? A. No.

30 Q. Did you get Mr. Lees to go to Toronto, or what occurred next? A. No. Mr. Cheyne returned home. This was on Thursday evening he returned home. He came back on Friday afternoon.

Q. Was the chattel mortgage then given? A. The chattel mortgage, I think, was given that night.

Q. Who went over to get it executed? A. I believe Mr. Lees himself.

Q. That is Mr. Lees, the solicitor. He went over—you mean he came down to Toronto?

A. Yes.

Q. The mortgage was drawn in Hamilton? A. I think it was.

Q. To a Mr. Wilson there? A. I didn't know at the time.

40 Q. You know now—Mr. Wilson, a tailor in Hamilton? A. I understand, yes. He is not in business now.

Q. I believe you gave a guarantee or bond to Mr. Wilson? A. No, we didn't.

Q. Who did you give it to? A. We gave it to Mr. Lees.

Q. Who is Mr. Lees representing; you, of course, now, I suppose? A. Yes.

Q. Anybody else at all? A. Not that I know of.

Q. You have got rid of the client entirely? A. Yes.

Q. You gave a bond to him; why did you give it to him? This is the bond. The date

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the 1st November, the same date as the chattel mortgage? A. We signed that on the Saturday morning, the morning that we got the cheque.

Q. Who did you give that bond to? A. To Mr. Lees.

Q. You did not give it to Mr. Lees; you seem to be so well coached? A. I object to the use of that term. I gave it to him to hold, to give it to Mr. Wilson at his own discretion. That was the understanding on which it was given.

Q. Who asked for it? A. Mr. Lees.

Q. Why did he ask for it? A. He said the amount was large and he thought Mr. Wilson should have it.

10 Q. You did not think he was acting for Mr. Wilson at all? A. I didn't know.

Q. You gave it to him merely as your own solicitor? A. Merely as our own solicitor.

Q. Not as Mr. Wilson's at all? A. No.

Q. Who was acting for Mr. Wilson? A. I don't know.

Q. Did you ever hear of anyone acting for him? A. I did subsequently.

Q. When this suit was brought? A. Yes.

Q. Has this bond been in possession of Mr. Lees ever since? A. I presume so. This is the first time I have seen it.

Q. You were asked before when you were examined—*Mr. Gibbons reads question 25 in witness' examination*—"Was not that discussed; you had the question of these others pressing, and
20 "you had to give some inducement to a man to give a chattel mortgage to one creditor for their "claim to the exclusion of the others; it had to be of some benefit to him; you knew the effect "of this chattel mortgage would be to keep off the other creditors?" What did you say to that? A. In answer to it?

Q. Yes? A. I don't know what I said.

Q. What do you say now? A. I say I knew the effect of it.

Q. You said then "Yes;" you knew the effect of it would be to cut off the other creditors.

Mr. Gibbons reads question 26, "And that was discussed with him?" A. No, not to any extent.

Q. Then you said, "To some extent." *Mr. Gibbons reads question 27, "Quite sufficiently*
30 "to enable you both to understand it, was it not?" What do you say to that now? A. I simply say so far as my knowledge of Mr. Cheyne was concerned that he knew the effect of it as well as I did.

Q. You answered "Yes" before? A. There are a number of questions bearing on that; I think one answer modifies the others.

Q. *Question 28 and answer*, "So that while you were getting your claim secured, the "Cheynes were getting what was practically protection from their other creditors; the other "creditors could not touch the stock in the meantime until you were paid? A. I understand "that." That is the temptation you put upon him; that was your suggestion, was it not? A. No, it was not.

40 Q. *Question 29 and answer*, "That is the temptation you put before him; that was your "suggestion, was it not? A. No, it was not our suggestion; nor was there a temptation. He "was a man, and he understood the effect of it just as well as we did."

Q. *Question 30 and answer*, "You placed that effect before him, did you not, in the conversation? A. Not as an inducement."

Q. *Question 31 and answer*, "What did you do it for? A. In the conversation that came "up." You knew, of course, that there were other creditors? A. I did.

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Q. When he came down did he mention the amount of his liabilities? A. Yes, he mentioned to me the amount of his liabilities.

Q. What amount did he give you? A. He gave me—outside of ours—about \$4,000.

Q. How much were you? A. We were about \$5,000.

Q. So that made his liabilities about \$9,000? A. Yes, something less.

Q. Did he give you any statement of his assets? A. No, any information he gave me was simply verbal.

Q. Did he give you any approximate amount? A. Yes.

Q. About how much did he say the stock at 100 cents was? A. I don't think 100 cents was mentioned. He said that his assets amounted to something over \$10,000.

Q. You did assume that to be at 100 cents? A. I don't know that I thought very much about it.

Q. You knew this woman had practically little or no capital in the business, or to put in? A. He had paid us in the first place about seven or eight hundred dollars.

Q. And that was about all she had? A. She had some equity in some property.

Q. Outside of that the \$700 you got originally was all you heard of her having? A. I think she had furniture and one thing and another.

Q. The equity in the property amounted to nothing, I believe? A. I don't know anything about it.

20 Q. You knew that outside of yourself that there were these \$4,000 of liabilities, and as far as there were any assets, they were about \$10,000? A. Yes.

Q. And you knew in that case that the creditors were not to get paid in full? A. No, I didn't.

Q. I want you to be careful. Did you say anything to Mr. Cheyne that if this chattel mortgage was given that before long he could get a settlement from his creditors, and that he could get an easy settlement? A. No, I didn't.

Q. Are you willing to swear that you didn't? A. I will swear to the best of my knowledge I didn't.

30 Q. Did you say anything about that, that he would be able to get a settlement on his own terms? A. No, I don't remember it.

Q. Was there any discussion—now he says that you did discuss it over and over again—was there any discussion at all when this chattel mortgage was being put on, about the fact of his being able to arrange with these other creditors? A. There was conversation with him to the effect that when in a position he could pay the other creditors.

Q. I ask you again, was there any discussion; that after this chattel mortgage had been put upon the property that the creditors would be very glad to come to terms, and that he could make a composition with them on easy terms? A. To the best of my knowledge there was nothing said about it.

40 A. You never discussed in any way the question of settlement with the other creditors? A. Yes, that was mentioned.

Q. In what way? A. The arrangement we knew, if effected, would, we supposed, leave him in a position to pay the other creditors gradually.

Q. Did you think it improved his position to the other creditors to give this chattel mortgage on his stock? A. I certainly thought it would. I would not have arranged with him to continue in the business and supply him with new goods if I hadn't thought he was in a position to work it out.

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Q. You had arranged with him to supply to him new goods? A. Yes, arranged to give him \$1,000.

Q. Did you take any security for that? A. Yes, subsequently.

Q. How long subsequent? A. I think it was a month.

Q. Was there any arrangement that you were to have security at the time you took the chattel mortgage—at the time you gave the goods? A. I believe there was an agreement that he would if we wished it.

Q. Was it in writing? A. I never saw it to my knowledge.

Q. Did you ever hear of a writing? A. Yes.

10 (Mr. Gibbons asks Mr. Ritchie for document.)

Q. So you had so much faith in this business that was going on that you were going to supply goods to him when you took this mortgage? Whose handwriting is that? A. I don't know.

Q. Is that Mr. Lees' handwriting—was not it written in your presence? A. No, not to my knowledge.

Q. You do not know who wrote this out? A. I don't.

Q. Who did you instruct to write it out? A. I didn't instruct anyone.

Q. It was done without any instructions from you? A. Yes.

Q. And without any arrangement? A. Yes.

20 Q. Mr. Lees took it upon himself to do this, did he? A. Yes.

Q. Entirely without consulting you? A. He may have mentioned that he would do it.

Q. You had nothing to do with the arranging with Cheyne yourself? A. No.

Q. The first you heard of it was from Mr. Lees? A. The first suggestion was from Mr. Lees.

Q. Was not the suggestion of the agreement the same time as the suggestion that you were to give the goods? A. I am not sure.

Q. Did you receive that about the same date? A. I don't think I ever received it.

Q. This remained with Mr. Lees? A. Yes, in his hands.

30 Q. Then about a month after you took the chattel mortgage in pursuance of that agreement? A. Yes.

Q. And how long after that did you take possession? A. I don't think it was very long.

Q. A week? A. It may have been; I am not sure.

Q. Three or four days? A. I cannot say.

Q. It was within a week after getting the chattel mortgage that you took possession? A. I think so.

Q. And after the order had been made in this suit on the motion for injunction I believe you went on and sold these goods; did you sell them? A. They were sold.

Q. Who sold them? A. The matter was left entirely in our solicitor's hands.

40 Q. Were you present at the sale? A. No.

Q. Did you get the proceeds of your chattel mortgage? A. We did.

Q. In full? A. Yes.

Q. Had you anything to do with the purchase? A. No.

Q. It was long subsequent to your previous examination and long subsequent to the commencement of this suit that that sale took place? A. I could not say when the sale took place. I think it was in the first part of December.

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Q. It was some time after your examination in Hamilton and after the motion for injunction?
A. I don't know.

Q. Then the first mortgage was on the 1st November. You say that second mortgage was not taken until a month after that, that would be the 1st December. Then the sale could not be till sometime after that?

MR. RITCHIE—The sale was about the middle of December.

Q. When was the sale? A. I don't know.

Q. As near as you can tell me? A. I suppose it was about the middle of December; somewhere's towards the middle of December, I presume.

10 Q. You got paid your full claim at the time this chattel mortgage was given to Mr. Wilson?
A. Yes.

Q. How much? A. \$4,700 odd.

Q. From whom did you receive the cheque? A. From Mr. Lees.

Q. Whose cheque was it? A. I think it was their own cheque.

Q. A cheque of the firm of Scott, Lees & Hobson? A. Yes.

CROSS-EXAMINED by Mr. Ritchie.

Q. Now will you say that it was about the last of October that you first heard that there was any difficulty so far as Cheyne was concerned, or Miss Jennie Cheyne? A. Yes.

Q. And in consequence of that you sent down, you say, Mr. Duffield as one of the repre-
20 sentatives of the firm to employ a solicitor in Toronto to try and get Cheyne to make an assignment for the benefit of creditors? A. I did.

Q. And at that time what did you understand was the amount of Miss Cheyne's liabilities outside of your firm? A. We supposed that it was a very small amount. We supposed that we were creditors to the amount of about nine-tenths of his liabilities.

Q. When was this? A. Up to the time that he came down to Toronto.

Q. And did you hear the names of the persons who were threatening suit? A. I had.

Q. And did you know the amounts? A. No.

Q. Did you hear the amounts at the time? A. No.

Q. At all events you supposed the liabilities, outside of yourself, were small? A. Yes.

30 Q. When Mr. Cheyne saw you what did he say as to the outside liabilities—first as to whether he was being sued or not; what did he say? Your opinion was that he had been threatened with suit. When he came up and saw you, what did he tell you as to that? A. The information he gave us, as near as I can remember at that time, was that his other creditors were showing him very little leniency, one of them in fact.

Q. Did he tell you whether or not he had been sued? A. He said that the account of one was in the solicitor's hands.

Q. Did he say anything more about it? A. He spoke in a general way of the fact that he had to pay all his bills in a short time.

Q. On what terms have you been selling him? A. We sold to him under an arrangement
40 that he was to remit us weekly.

Q. What was the extent of the line of credit; was anything agreed on as to that? A. No, I think the amount was not prescribed.

Q. At all events it got large enough; it got up to what amount? A. About \$5,000.

Q. I see the chattel mortgage is for \$4,700—in that neighborhood—that would be correct—about that? A. Yes, we sold him more goods than that.

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Q. That was the balance then due? A. Yes.

Q. Then you say he was to remit weekly? A. Yes; and he did not keep up his agreement in that respect.

Q. For how long a time prior to the giving of this chattel mortgage did he fail to keep up that agreement? A. For seven months.

Q. Then you say when he came to Hamilton that you had a discussion with him, and you then asked him to make an assignment? A. I did.

Q. And that he seemed unwilling to do? A. He was unwilling to do it.

Q. Did this take place before Mr. Lees was called in? A. Yes.

10 Q. When you found he would not make an assignment did you ask him anything as to what he could do? A. I did.

Q. And what suggestion did you make to him, if any; what question did you ask? A. Finally, the question I put to him was, that if the amount can be raised by him on a chattel mortgage if he would be willing to give that mortgage and pay our claim.

Q. You asked him, if the amount can be raised by him by way of chattel mortgage, if he would be willing to give that mortgage and pay you out of the proceeds? A. Yes, that is it.

Q. And what did he say as to that? A. He very readily assented to it.

Q. Then did you know whether he had made any efforts before that to raise money on a chattel mortgage; did he say anything to you about that? A. I don't remember that he did
20 say anything about it.

Q. You do not know whether he told you that he had made any efforts in Toronto or not? A. No.

Q. After he said he was willing to do it did you have any discussion as to the terms or rate of interest or anything of that kind? A. Well, that was with the solicitor, who came in during that conversation that I had with him.

Q. Well, then, when did you send for the solicitor? After he told you he was willing to give you a mortgage? A. Yes.

Q. So you had discussed with him before the solicitor came there, and ascertained from him that he was willing to give you this mortgage and to pay you out of the proceeds?

30 A. Yes.

Q. Had you any discussion, prior to Mr. Lees' coming, about supplying further goods to him? A. We had; that was part of the conversation. He knew.

Q. He knew that if that was paid off that you would agree to give him further goods? A. Yes.

Q. To what extent? A. I think I mentioned to about \$1,000.

Q. And did you stipulate then that he was to give you security for that; was there a conversation as to his giving you security for it, if you wanted it? A. I don't think there was at that juncture.

Q. After finding that he was willing to give the chattel mortgage, you telephoned, or how did
40 you get Mr. Lees, or did you send for him? A. One of the boys telephoned from the office for him.

Q. Had they been acting as solicitors for you in other transactions? A. Not to my knowledge; I think that was the first transaction.

Q. Then you telephoned Mr. Lees to come; and what did he say, or what did he tell him? A. He had a conversation with Mr. Cheyne. I intimated to Mr. Lees that Mr. Cheyne expressed himself as willing to give a chattel mortgage if somebody could lend him on it. And I handed him over then to the solicitor, Mr. Lees.

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Q. Then you had no further discussion with him? A. Oh, I may have taken part in the discussion. I remained in the office while he was there.

Q. What did Mr. Lees eventually say to him; what was said about terms? A. Mr. Lees made some enquiries as to his position; took down some memorandum as to his affairs, as to his assets.

Q. Was there anything else than assets that he enquired about that you know of? A. I am not sure.

Q. You recollect him enquiring about the assets? A. Yes.

Q. The amount of the stock? A. Yes.

10 Q. Do you recollect what he said was the amount of stock? A. He gave him some particulars concerning stock, book debts, etc., that showed his assets, as I mentioned, to be something over \$10,000.

Q. Was there any discussion as to the character of the stock? A. Yes, Mr. Lees made enquiries concerning it.

Q. Of Mr. Cheyne? A. Of Mr. Cheyne.

Q. And what did Mr. Cheyne say? A. He intimated that the stock was a good one; and he gave him some other information about it of a general character.

Q. What, if anything was said about terms, as to when it was to be paid and the rate of interest, or anything of that kind? A. Yes, that matter was arranged with Mr. Cheyne; the
20 amount that he was to pay weekly, and the interest that he was to pay.

Q. How much? A. \$125, I remember, was mentioned first, and Mr. Cheyne objected to that; and finally, I believe, it was agreed that he should pay \$100 weekly. He thought, with that arrangement, it would leave him in a position to buy what goods he would require, and pay his creditors.

Q. That is, Cheyne thought if he could get the payments down to \$100 a week, that that would enable him to get on? A. Yes.

Q. And then Mr. Lees went away, did he, to see what he could do? A. Yes, Mr. Lees and Mr. Cheyne went home; this was Thursday evening.

Q. Was the rate of interest discussed at that time? A. Yes, Mr. Lees wanted ten per cent.;
30 Mr. Cheyne objected, and I sided with Mr. Cheyne; and finally Mr. Lees thought he could arrange for eight, and I understood that was the rate subsequently agreed upon.

Q. Then it was arranged that if he could get a loan, payable \$100 a week, and with interest at eight per cent., that he would take the mortgage? A. Yes.

Adjourned at five o'clock, to ten o'clock, April 17th.

17th April, 1896.

CROSS-EXAMINATION OF J. J. GREENE, continued.

MR. GIBBONS, Q.C., and MR. McINTOSH for Plaintiffs,

MR. RITCHIE, Q.C., and MR. SCOTT for Defendants.

MR. RITCHIE--I may as well put in this mortgage. This is a certified copy of the first
40 mortgage, produced by Mr. Gibbons, to Wilson, dated the first day of November, 1895; to Wilson from Cheyne for \$4,775. I admit the certified copy to be put in to be used. This is for \$4,775, payable \$100 a week at eight per cent.

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Q. Then was that \$4,775 more than the amount owing to the Sanford Company? A. No, that was not more, just sufficient.

Q. I wanted to know if that was the exact amount, or if it was a little more? A. No, it was the exact amount.

Q. I think you are mistaken about that? A. Perhaps I may be, but that is my impression.

Q. At all events it was \$4,700 something? A. Yes.

Q. And when were you paid the amount paid? A. On Saturday morning; I think it would be November 2nd.

Q. Either the first or the second of November? A. Yes.

10 Q. After the chattel mortgage had been given? A. Yes.

Q. From whom did you receive the money? A. We received the cheque from Mr. Lees.

Q. Of Scott, Lees & Hobson? A. Yes.

Q. So that that paid off the full amount owing you at that time? A. Yes, it did.

Q. Had you ever seen or had any dealings with Mr. Wilson before? A. No.

Q. Did you ever have any conversation with him, or did any member of your firm, so far as you know, have any conversation with him in connection with this matter? A. No.

Q. You said that you had arranged with Cheyne after he had agreed to give you the chattel mortgage, or about the same time that he agreed to give you the chattel mortgage, that you would make further advances of goods? A. I did.

Q. That was after he had agreed to give the mortgage? A. Yes.

Q. And you said in the neighborhood of about a thousand dollars? A. I did.

Q. And can you say what date that was? Was that the day that the mortgage was executed, or the day he agreed to give it? A. I think it was the day he agreed to give it.

Q. Then did you, as a matter of fact, arrange to make any advance of goods to him at that time? A. I did.

Q. To what extent at that time? I mean to say, what was the extent of the order which he had given and which you agreed to fill? A. We agreed to give him a line of about a thousand dollars.

Q. You have told us that, but I am asking you how much on this occasion did he ask you 30 to ship him; what was the extent of the order then given? A. I think he gave us an order at once for about \$500.

Q. Did you fill the order? A. We did.

Q. Did you ship him other goods afterwards? A. We did.

Q. So that on the 4th day of December, 1895, he was indebted to your company in a certain sum? A. He was.

Q. I see this second chattel mortgage is drawn up for \$916.33. Did that represent the amount that Cheyne or Miss Cheyne was then owing your company? A. I think it does.

MR. RITCHIE, Q.C., produces copy of mortgage, which is admitted and marked Exhibit 4.

Q. You got this mortgage, and afterwards the goods were sold?

40 HIS LORDSHIP—How do you mean?

MR. RITCHIE—This is the second chattel mortgage on this stock of goods, and under it the whole thing was sold.

HIS LORDSHIP—It was not sold under the Wilson mortgage?

MR. RITCHIE—No, my Lord; it was sold under this mortgage. Sanford & Co. sold in Toronto, under this mortgage, through an agent in Toronto.

A. I believe so.

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Q. Realizing more than enough to pay off the Wilson mortgage, and leaving something to apply on this? A. I presume it did.

Q. That is what you believe, at all events? A. I believe that.

Q. Then, after the goods were sold, do you know if the Wilson mortgage was paid off by Scott, Lees & Hobson; or do you know anything of that of your own knowledge? A. No, not of my own knowledge. I understand it was.

Q. You do know, though, that the sale was made sometime shortly before Christmas, 1895? A. I do.

Q. Now, do you recollect whether that guarantee that was signed, was given before or after the chattel mortgage had been executed? A. The guarantee was given on Saturday morning. I understood that—

Q. Was that after the chattel mortgage was executed? A. After.

Q. It is dated the same date; but you say it was given after the chattel mortgage was executed. Now, at whose suggestion was it given? How did you come to give it? A. It was given at the suggestion of Mr. Lees.

Q. For what reason? A. He thought it was right that we should do so. The amount he said was large. We really knew more, he supposed, concerning the business, the value of the stock, than he did.

Q. Had you made any statement to Mr. Lees as to what you thought the value of the stock to be? A. Nothing, except in a general way at the time that he was talking to Mr. Cheyne.

Q. Then you said something about discretion; that was to be given on his discretion? A. That was the understanding, he was to hold that chattel mortgage—

Q. The chattel mortgage? A. To hold the guarantee, and if in his judgment he deemed it best to deliver it he could do so.

Q. But it was left in his discretion? A. It was left in his discretion.

Q. Then for how long did Cheyne carry on business after that first chattel mortgage to Wilson was given (when I speak of Cheyne I mean Miss Cheyne, of course); until the stock was sold? A. I think he did, until a short time before. I think he did up until that time.

BY MR. GIBBONS, Q.C.

Q. You say that Mr. Cheyne consented at once to this scheme when it was proposed by Mr. Lees? A. Very readily.

Q. Did he consent at all that day, Thursday? A. No.

Q. He did not consent so readily, then, as one would think? A. He said he would take the night to consider it.

Q. Was he objecting as to what would become of the other creditors? A. No, not particularly.

Q. Nothing said about that? A. Nothing particularly.

Q. If he says that he protested this wouldn't be fair to the other creditors; is that so? Did he raise that point? A. Not to my knowledge.

Q. You say that Mr. Lees asked him something about the assets. Did he ask him anything about the liabilities? A. I believe we did not.

Q. What a remarkable memory you have got, Mr. Greene. *Mr. Gibbons reads question 70 and answer,* "Did he ask any questions as to what, if any, capital Cheyne had? A. He asked "particulars as to his assets and liabilities." Is that what you told me before? A. I say that he asked particulars as to his assets; I thought he did as to his liabilities.

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Q. This is what you said before: "He asked particulars as to his assets and liabilities." Then you were asked again, at question 71, "What statement did he make as to his liabilities? A. Cheyne gave him the statement himself." That is, gave Lees? A. Yes, part of the conversation was with myself; part was with Mr. Lees.

Q. Did Mr. Cheyne give Mr. Lees a statement of his liabilities in your presence? A. I am not prepared to say that he did.

Q. Was the list taken down on the desk? Did he give you from memory, as nearly as he could, the names of those creditors? A. He gave me them.

Q. Was that in Mr. Lees' presence? A. No, it was not in Mr. Lees' presence.

10 Q. Was that statement there when Mr. Lees came in? A. I believe it was.

Q. On your desk? A. I don't know; or in my hand.

Q. You had had that statement of the liabilities? A. I had the statement of the liabilities.

Q. You say you had seen Mr. Lees, who had never been your solicitor before; you saw him before Cheyne came down to Hamilton? A. I beg to correct a statement I made yesterday upon that point. I do not know whether it was important or not; but we had engaged Mr. Lees, the firm of Scott, Lees & Hobson, before that, on another occasion, in which you yourself were interested.

Q. You had seen him, and consulted with him about this matter, before Cheyne came down at all? A. I had.

20 BY MR. RITCHE, Q.C. :

Q. You said Mr. Lees was not present when the statement of liabilities was given, but you had the statement there. Did he ever show that statement of liabilities to Mr. Lees? A. No.

MR. GIBBONS, Q.C.—He has told us all about it; that he had it there.

WITNESS.—It was simply a verbal statement.

ROBERT CHEYNE, sworn, examined.

BY MR. GIBBONS, Q.C.

Q. You managed, I believe, a business for your daughter in the City of Toronto? A. Yes.

Q. Started, I think, in the spring of 1895? A. Yes.

Q. Had she any capital? A. Yes.

30 Q. How much? Small? A. Yes, small; \$750.

Q. Mr. Greene spoke about her having an equity in some property in Toronto; was there anything in that? A. No, I do not think so.

Q. Did you ever have any discussion with Mr. Greene about it? Did he know about whether there was anything in it or not? Did you ever discuss it with him? A. Yes, but I don't think he thought there was much in it at present prices.

Q. There had never been anything got out of it? A. No.

Q. You bought mostly the goods upon credit? A. Yes.

Q. I believe that in the end of 1895, a visit was paid to you from Hamilton from Sanford's people? A. Yes.

40 Q. Who came down? A. Mr. Alley and Mr. Duffield, and one of Kappelle's firm.

Q. A solicitor, anyway? A. Two solicitors, anyway.

Q. And they came to you at the store? A. No, at the house.

Q. For what purpose? A. To ask me to sign; to make an assignment to them.

Q. To make an assignment to Sanford's people? A. Yes.

Q. To their nominee? A. Yes.

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Q. What reason did they give for that, if any? A. They said they had been informed that day that Calder and Johnson, and Burns & Lewis were about to bring an action against us in the morning.

Q. About to sue you? A. Yes.

Q. You owed them for goods overdue? A. Yes.

Q. Was anything done that night? A. No.

MR. RITCHIE, Q.C.—Don't lead the witness; he swore contrary to that in his examination.

MR. GIBBONS, Q.C.—Q. Did you owe them at that time? Were there overdue debts to any of the different creditors? A. Nothing dangerous at all; very small.

10 Q. You owed something to Burns & Lewis at that time? A. Yes, but Burns & Lewis were not actually due at that time.

Q. Calder's were? A. A small amount; something about a hundred dollars.

Q. The others were maturing immediately almost? A. Yes, but they hadn't said anything about them.

Q. And some were overdue and unpaid?

MR. RITCHIE, Q.C.—He has not said that.

MR. GIBBONS, Q.C.—Q. Were there part of your debts overdue and unpaid? A. Yes.

Q. Was there anything done on this night? A. No.

Q. You stood the importun^g of the whole four? A. Yes.

20 Q. Was Mr. Calder's claim, as a matter of fact, in Mr. Parke's hands at that time? A. Well, Mr. Calder says not.

Q. Did you arrange to go to Hamilton that night? A. The next day; I arranged that night to go the next day.

Q. And you did go down? A. I did; and took a letter from Calder, saying that there was nothing due, nor he had no intention of taking any proceedings. I took a letter to Mr. Greene.

Q. A letter to Mr. Greene of the Sanford Company? A. Yes.

Q. So that there was no necessity for this excitement? A. Exactly.

Q. Did that appease them? A. No.

30 Q. What occurred in the office after you got there? Who was there? A. Mr. Greene and Mr. Duffield.

Q. When you first went in? A. Yes.

Q. Did they still urge you to make this assignment? A. Yes.

Q. And you still refused? A. Yes.

Q. Then what occurred? A. Then Mr. Greene suggested this mortgage.

Q. What was the suggestion? A. That I should borrow the money and pay them, and that they would then support me and carry me along.

Q. Anything said about the other creditors? A. Yes, I would not sign it; I would not agree to it on that account. I asked him how about the other creditors, how would they be.
40 Well, he said, they could do nothing.

Q. Had you given a list of the creditors? A. Yes, I gave a list from memory just.

Q. To Mr. Greene? A. Yes.

Q. Did he take them down? A. He did.

Q. What did that amount to, as far as you gave it to him, outside of Sanford's? A. \$3,800, \$800, \$4,600.

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\$3,800,

Q. He said they could do nothing. That would be altogether about \$9,500, \$9,315 exactly?
A. Yes.

Q. I believe Mr. Lees was sent for, or came in while you were there? A. He was sent for after a while.

Q. Were you still discussing the matter? A. We had discussed it fully, and I said I did not think I could get any person in Toronto who would lend me the money; and he said he thought that could be arranged and he would send for his solicitor; and he did.

Q. Was there any discussion with Mr. Lees after he came in?

HIS LORDSHIP—Q. Greene said that, did he? A. Yes.

10 Q. That he thought it could be arranged? A. Yes.

Q. That he thought it could be arranged by whom? A. He thought the money could be arranged, and he would send for his solicitor and see.

MR. GIBBONS, Q.C.—Q. Had you consented up to this time to give the chattel mortgage?
A. No.

Q. Did any further discussion occur after Mr. Lees came in? A. Yes.

Q. Did Mr. Lees take part in the discussion? A. Yes.

Q. In urging you to give the chattel mortgage? A. Yes.

MR. RITCHIE—I wish my learned friend would not lead this witness; he is a hostile witness to us.

20 MR. GIBBONS—Q. What was said? A. Mr. Lees was spoken to about the money, and he said that he would speak over the telephone to his partner; and he came back in a short time and said the matter could be arranged at eight per cent. They had a client, I understood him to say, who would advance the money.

Q. Had you consented by this time? A. No.

Q. What was said then before you consented? What inducement or what argument was used with you? A. The argument was this, that Mr. Lees said the other creditors could do nothing; they might kick, and no doubt they would, but in reality they could do nothing, and they would simply have to wait; and that I could no doubt make an easy compromise with them when I got ready.

30 Q. Did he say anything about any other case? A. Yes, he said that they had a case exactly similar, and that it had been shown by that case that this was within the law, and so, and that it was all right.

Q. Did he mention the case? A. Yes.

Q. Do you remember the name? A. Well, Wilson, but I forget the other; he did mention the case.

Q. Did you have a list of your liabilities there? A. No.

Q. Did you give one while you were there? A. No, I just gave it from memory.

Q. Who took it down? A. Mr. Greene.

HIS LORDSHIP—Q. Was that when Lees was there? A. No, that was before.

40 MR. GIBBONS, Q.C.—Q. Did Mr. Lees discuss with you at all who were your creditors?
A. I don't know that I particularly mentioned each one over to him, but I told him about the amount.

Q. On that occasion? A. Yes.

Q. Did you, on any other occasion, discuss with him the particulars of who the other creditors were? A. On the train, on the way down to Toronto, we discussed the liabilities and the assets, etc.

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Q. Did you then give him figures? A. Yes, I did.

Q. Did he take them down? A. Yes, he made a memorandum; I do not know what he took down.

Q. Did you give him, as nearly as you could, the particulars of the other creditors? A. I think, just about the total, you know, something about \$4,500. He took the assets down rather in items; rather in departments; rather about how much stock I had in each department.

Q. The liabilities were put generally what was due to Sanford, and what was outside? A. Yes, of course, he knew what was due to Sanford.

Q. When did your daughter sign this agreement to give the second chattel mortgage? A. I refused to sign it that night, and said I would go back the next day to Hamilton; and I did.

Q. You refused to sign what? A. To sign anything. And then, before I came away, I did sign it, or rather, excuse me, agreed to sign it; and then Mr. Lees had the chattel mortgage prepared while I was buying some new goods; and he and I came down on the train and we went up to the house, and my daughter signed both the mortgage and that agreement for further mortgage.

Q. Then the mortgage and this agreement for further mortgage were signed at the same time? A. Yes.

Q. I see Mr. Lees was the witness? A. Yes.

Q. He came to your house in Toronto to get it completed? A. Yes, signed within five
20 minutes.

Q. The plaintiffs Burns & Lewis, are creditors of yours for a considerable amount—some \$1,300 unpaid? A. Yes.

Q. Did you meet your payment of \$100 a week then? A. I did, and the interest.

Q. Made no default in these? A. No.

Q. When did you next see Mr. Lees? A. He came in two or three days prior to the foreclosure, and said that he had brought down a mortgage to sign for the new goods lately sent.

Q. That would be about the 4th December, would it, the date of this second mortgage? A. Yes, it was only a few days, three or four days at the outside, to the —

Q. I see that this mortgage is for \$916, payable forthwith? A. Yes.

Q. How did you come to give that mortgage? A. Well, he said that he had made it due,
30 but that it would be all right, that it would be all right.

Q. That it would be all right? A. Yes.

Q. What do you mean? A. I understood him that it would not be foreclosed right now, that it would be merely good as a security.

Q. I see it is drawn payable forthwith together with the interest thereon. How long before any action was taken on that mortgage? A. Well, I think about four days; just within a day or so, anyway.

Q. You had made no default on the previous mortgage? A. No.

Q. Then, I believe, they sent Mr. Blackley down and took possession? A. He just came
40 down at five o'clock on Tuesday evening, and said he had come to take possession under the mortgage.

Q. Was any reason given by Mr. Lees for wanting this second mortgage then? A. No.

Q. Tell me what occurred; anything further about the conversation? A. At the time the second mortgage was signed?

Q. Yes? A. Of course he said he had come down just to take a mortgage on the new goods, as per that agreement. I had agreed to sign a mortgage for new goods. So my daughter—

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Q. Anything else said? A. No, that was all.

HIS LORDSHIP—It covers all the goods, doesn't it, not only the new?

MR. GIBBONS, Q.C.—Yes, my lord.

WITNESS—Well, he said it was for the new goods distinctly.

Q. Any reason given for foreclosing this mortgage so quickly and taking possession? A. No, none at all. I asked Blackley and he said he did not—

Q. Never mind about Blackley. No reason given by the Sanford people, as far as they were concerned? A. No.

Q. Did Mr. Wilson ever come to see your stock? A. No, I never seen Mr. Wilson.

10 Q. Stock had not been taken, I believe? A. No.

Q. Any estimate which you gave was just an estimate? A. Yes, I had taken stock only just a short time before I gave those.

Q. The only capital, I believe, that was ever put into this business was this original cash? A. That is all.

Q. So that the assets and liabilities, in the statement which you gave, how did that compare? A. About equally, I think.

Q. Is that in the statement given to Mr. Lees or to Mr. Greene? A. In the statement given to Mr. Lees; Mr. Greene didn't take an exact copy of the assets, you know, but Mr. Lees did.

Q. In the statement given to Mr. Lees, the assets and liabilities, how were they? A. They 20 were just about the same.

Q. Did you have any further discussion with Mr. Lees on the train as to the other creditors? A. Nothing more than just a repetition of what was before, that they couldn't do anything; that it was within the law.

Q. Anything then said about a composition?

MR. RITCHIE, Q.C.—Surely my learned friend should not lead the witness in that way.

HIS LORDSHIP—The witness mentioned this before as being discussed at the previous meeting.

MR. GIBBONS, Q.C.—Anything said on the train about composition? A. Well, I could not, I cannot remember.

30 Q. Do you know what the goods brought when they were sold? A. Not to a dollar or so, but between forty-eight and forty-nine hundred dollars, I think, altogether.

Q. Sold by public auction, I believe? A. Yes.

HIS LORDSHIP—Q. Is that the whole of the goods? A. Yes.

Q. What did you value those goods at in your giving figure to Mr. Greene before; what did you value this stock at, that was sold? A. About nine thousand dollars.

MR. GIBBONS, Q.C.—Q. Was that taking it at cost? A. Yes.

Q. Did Mr. Greene understand that that was taking it at cost? A. Oh, yes, of course.

Q. Was it worth cost? A. Oh, yes, they were all new goods.

Q. If you could retail them? A. Yes, all new, nice goods.

40 Q. If you had to meet your liabilities as they came due, could they have been sold? Your liabilities were maturing at this time, Mr. Greene tells us; could they have been sold to meet these liabilities? A. I think, had Mr. Greene supported me as I expected, and as I understood from him that they would, I could have.

Q. If your other creditors had waited? A. Yes.

Q. But there was no pretence that you could meet your creditors' liabilities as they matured? A. No.

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Q. Did Mr. Greene understand that, and you understand that, and Mr. Lees? A. Yes.

MR. RITCHIE, Q. C.—Surely that is leading.

A. *Continued.* They understood that all right. They knew I could not meet the \$4,000, because they agreed to carry me for that amount for two years.

MR. RITCHIE, Q. C.—He speaks of the original dealing.

MR. GIBBONS, Q. C.—Q. You are talking about the beginning, not about the second arrangement? A. It was the same thing.

HIS LORDSHIP.—Q. You say if Mr. Greene had supported you as he promised, you could have met your liabilities. How do you mean? A. If he had given me what new goods I

10 required.

Q. Did he not? A. No, sir.

Q. What new goods was he to give you? A. I understood he was to give me what I required as I went along.

Q. No limit? A. No, there was no limit.

Q. Did he not give you what you required?

MR. GIBBONS, Q. C.—You had made your payments under the first mortgage when they closed upon you? A. Yes.

Q. There was nothing due on the second or on the new goods? A. It was only thirty days; I did not agree to pay for them in thirty days.

20 Q. When they closed down on you, you had really nothing in default? A. No; I did not consider I had anything in default to them.

Q. In the meantime you had had no means of paying your other creditors that matured? A. No.

Q. And you did not pay any of them? A. I had paid those that matured from the spring purchases pretty well.

Q. After the first November, after you gave your chattel mortgage, you paid nothing to your other creditors? A. Not much, because they hadn't become due.

Q. But they were maturing right along? A. Yes.

Q. But as they were, you did not pay them? A. No.

30 Q. The goods were covered by the chattel mortgage, and you did not attempt to pay them? A. No.

MR. RITCHIE, Q. C.—My learned friend should not lead, because I understand it is not the fact.

MR. GIBBONS, Q. C.—Q. It is very certain that you did not pay my clients Burns & Lewis anything after the first of November? A. No.

Q. Did you pay John Calder, or did you pay anybody outside of Sanford, after the first of November? A. No, I did not.

Q. It was not the intention that you should pay them, was it, until you had paid this chattel mortgage and the Sanford people?

40 MR. RITCHIE, Q. C.—That I object to.

A. No.

MR. GIBBONS, Q. C.—Q. Why didn't you pay them? A. Because it was understood between the Sanford people and me that I would not pay them; that was one reason.

CROSS-EXAMINED by Mr. Ritchie, Q. C.

Q. When you say that it was understood between the Sanford people and you that you wouldn't pay them, who do you refer to? A. Mr. Greene.

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Q. He is the man you refer to? A. Yes, he is the man I was dealing with.

Q. You have been in business for a good many years yourself? A. I have been employed in business for a good many years.

Q. And done business on your own account? A. No, not very much.

Q. Any connection with importing stock and cattle and large transactions? A. You mean farm business; yes, I had some in that.

Q. And for many years as general manager for Robert Walker & Sons? A. Of one department.

Q. So that you had had considerable experience in business, extending over thirty or forty years? A. Yes.

Q. You say your daughter put in \$750 capital in this business? A. Yes.

Q. Did you represent to Mr. Greene or to the Sanford people that she was possessed of some other estate? A. No.

Q. Didn't you speak of some other property that she was interested in? A. No; she never had any.

Q. And when Mr. Duffield came down here, in October, he intimated to you that he had heard that some of your other creditors were about to issue writs against you? A. When he came to my house that night, yes.

Q. Do you recollect about what date in October that was? A. No.

20 Q. Do you recollect the day of the week? A. I think it was on a Wednesday night.

Q. And he went there with Mr. Kappelle and Mr. Bicknell, solicitors? A. Yes.

Q. And asked you about this, and wanted you to make an assignment for the general benefit of creditors? A. No, to the Sanford Company.

Q. For creditors generally? A. I didn't understand that. I understood it was—

Q. Isn't that what you have sworn to? A. No, I said that he wanted me to make an assignment to them.

Q. Then you did not understand it was an assignment for the benefit of creditors; is that what I understand you to say? A. That is just how it was. They said that—

30 Q. Did you understand it was a general assignment to their firm for the benefit of creditors or to them alone? A. I think it was to them alone. They said that they thought I had a right to give them that preference.

Q. They said that they were the largest creditors? A. Yes.

Q. And that the whole bulk of your liability was to them? A. great portion of it.

Q. Did you tell them at that time that there was nothing overdue? A. I said that there was nothing overdue from those people of whom they spoke.

Q. And then you told them that they were misinformed? A. Yes.

Q. That there was nothing overdue at that time? A. Yes.

Q. And you told them then that no person was in a position to sue? A. That no person had threatened to sue.

40 Q. And did you also say that there was nothing coming due until the tenth of the next month? A. I don't remember that. I don't think I said that, because my memory is not—I am not very good at accounts. I do not think I would make any statement of that kind.

Q. Your memory is not a very good one? A. Not in that line. I had never much to do with office work.

Q. Did you make any statement of that kind? A. I simply said that there was only a

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small amount due to John Calder and nothing due to the others, because, if I remember right, there were two acceptances for Burns & Lewis which did not mature for a few days.

Q. As a matter of fact, there was nothing overdue to Burns & Lewis at that time? A. No, that is my recollection, Mr. Ritchie.

Q. This happened at your house? A. Yes.

Q. You were asked the question: Burns & Lewis, Johnston and Calder were not pressing you, and you said no. That is correct? A. That is correct.

Q. You were asked the question: You owed Johnston and Calder at that time? Answer, Not much. But you owed them something? Answer, A little; a hundred dollars? A. Yes.

10 Q. That is all that was owing overdue at that time, \$100? A. That is all; yes. Burns & Lewis had been due, but had been renewed.

Q. It was outstanding at that time? A. Yes.

MR. GIBBONS, Q.C.—And was maturing on the fourth of the month.

MR. RITCHIE, Q.C.—Q. You were owing at that time to Sanford \$4,500 or \$4,700? A. Yes.

Q. And you said that the agreement at that time was that they would give you a credit of six months? A. No, that was never mentioned.

Q. Thirty-six, "And that had been owing for some time, had it?" speaking of the \$4,600. Answer, "It hadn't been due very long; I had six months to pay it." Was that true? Was that the extent of credit that they were to give you? A. No, I understood that I was to have
20 that \$4,000 carried for two years.

Q. Then you say that the forty-six hundred dollars, question 37, "The account had been incurred six months ago, had it?" Answer, "Yes, on six months' credit." Now, which is true; that you were to have six months' credit, or two years' credit? A. Both; that was what they said, that they would carry it on for two years, to give it a fair trial.

Q. Who told you that? A. Mr. Sweet.

Q. Who is Mr. Sweet? A. He is the manager there. I think Mr. Greene was present, too.

Q. Your affairs were not discussed at that time when Mr. Kappelle was at your house? A. No, it was just signing the mortgage.

Q. Except that you informed them that they were misinformed; that there was only \$100
30 overdue? A. Yes, and I took up a letter the next day.

Q. Then you said that you would go up to Hamilton the next day? A. Yes.

Q. That you volunteered yourself? A. Yes.

Q. And you informed them that they had been misinformed as to your liabilities? Now, there was an assignment, you say, prepared and presented to you at that time? A. Yes.

Q. Did you read the assignment over? A. No; I forgot which of the four had it in their hands; they said they—

Q. So that you cannot tell us what the form of assignment was? A. No, nothing more than what they told me.

Q. Will you tell us what they told you? A. That they thought I should assign to the
40 Sanford people.

Q. For the general benefit of creditors? A. Well, I understood it was—

Q. Wasn't Mr. Duffield's name now mentioned as the person who was to be the assignee? Isn't that what you swore before? A. That is the same. Duffield and Sanford are the same.

Q. At all events the person that they wanted you to assign to was to Duffield? A. They said to the Sanford Co. That is the word they used.

Q. That is what they said? A. Yes.

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Q. Are you sure that is what you swore to before? A. Yes. Duffield, I think, was the man that had the assignment in his hands.

Q. Question 63, "Who was the person that they wanted you to make an assignment to? Answer, To Duffield, I think?" A. Yes, I repeat that.

Q. "I think it was Duffield." Now, is that true or is it not? Was it to the Sanford Company or to Duffield? A. When I assigned to him I thought I was assigning to the other.

Q. You were asked to assign, at all events, to Duffield? A. Certainly, I think Duffield was mentioned, but it was particularly the Sanford Manufacturing Company that they particularly said they wished me to assign to.

10 Q. Then when you went up and saw Mr. Greene in Hamilton you had a long conversation with him before Mr. Lees came in at all? A. Yes, we had quite considerable conversation.

Q. Quite a lengthened discussion, and Mr. Greene then wanted you to make the assignment? A. Yes, he didn't seem satisfied with the explanation; the letter which I had shown him from Calder.

Q. Did he say how he desired the assignment should be made? A. Then, in Hamilton?

Q. Yes? A. No, I don't think so; because I refused positively to do it.

Q. Then did you tell him then that there was no necessity for you to make the assignment, that you could carry along all right? A. Yes, I thought I could.

Q. That is the reason that you did not want to make the assignment; you wanted to con-
20 tinue in business and make money out of it? A. Yes.

Q. If you had felt at that time that you were insolvent, you would have assigned to your creditors generally; if you had felt that it was useless for you to carry on? A. Oh, yes, if it was useless. I felt it was useless without their support, you know.

Q. At that time, even without their support, you refused to make the assignment when they asked you, because you thought you could carry on? A. Yes, I thought perhaps they would not press me to do it.

Q. That who would not press you? A. Sanford.

Q. And you did not think the other creditors would press you? A. I had no reason to think they would.

30 Q. You had no reason to think they would press you? A. No.

Q. They hadn't intimated any desire to press you? Then at that time your assets exceeded your liabilities by how much; a thousand or thousand?

MR. GIBBONS—How could they?

MR. RITCHIE, Q.C.—Q. You had fixtures in there? A. Yes.

Q. Now, taking your fixtures, and your stock-in-trade, and book-debts, how much would your assets exceed your liabilities at cost price? A. I don't think they would have exceeded any.

Q. You have stated, you know, that there would be about ten thousand dollars; did you not? A. Yes, assets.

Q. And your liabilities would not amount to ten thousand dollars; they would be less than
40 ten thousand dollars? A. No.

Q. The figures which you gave us—? A. I only gave those from memory, at the same time saying that there were other small ones which I could not remember.

Q. You see those that you gave from memory did not amount to that? A. No, I knew that I did not give all there. I only gave as near as I could, you know.

MR. RITCHIE asks Mr. Gibbons if he has the statement which is referred to.

MR. GIBBONS states that he has; and Burns & Lewis are put down at \$500 instead of \$1,300.

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A. Yes, at the same time I told them that there should be \$800 more to Burns & Lewis. You see I had no book.

MR. RITCHIE, Q.C.—Q. After asking you to make the assignment and your refusal, they said if you did not make the assignment you would either have to pay them up. I am reading now from your answer question 65: "When you refused to make an assignment, what did they say then? Answer, They said I had either to pay them up—if I would borrow the money and pay them up that they would carry me along—pay that much up, what it was then." That is, pay them up what was then owing to them then they would carry you along. Now, that is what was said to you? A. Yes.

10 Q. That you had to pay them up that amount? A. Yes, and he suggested that mode of doing it.

Q. And if you did not do that, they were going to enforce payment of your account? A. Yes.

Q. If you did not make an assignment? A. Yes.

Q. Then when you speak about them giving you a certain line of credit, was there anything in writing? A. No, I do not think so.

Q. Then your verbal understanding was, you say, that you would have a credit of \$3,500? A. \$4,000. I was to have a line of credit.

HIS LORDSHIP—When was that?

20 MR. RITCHIE, Q.C.—At the beginning.

HIS LORDSHIP—When you are asking if there was nothing in writing about the line of credit, you mean at this time or at the beginning?

MR. RITCHIE, Q.C.—At this time.

Q. Question 67, "That was understood when you incurred the account with them, that they were to carry the business along for a certain amount? Answer, Yes, I had no writing at all?" A. Yes, I had no writing at all, but that was the understanding.

Q. Question 68, "For what amount? Answer, Thirty-five hundred to four thousand dollars." That is your answer, and then you say that was a verbal understanding that you had with Mr. Greene. That was when you opened the business? A. Yes.

30 Q. And were you to give notes for the purchases from time to time? A. No, they never asked me for them.

Q. But they were sold, I suppose, on certain terms of credit, having regard to the class of goods sold; some being sold, I suppose, on three months' and others on four months' credit? A. No, it was all on the one line; it was just ready-made clothing and some woollens.

Q. What is the line on them? A. Six months.

Q. Then, as a matter of fact, at the time the Wilson chattel mortgage was given, you had exceeded your line of credit? A. Yes, I thought I was over about six or seven hundred dollars; and I was expecting to have to pay that and to be carried on for the other.

Q. Were you to make weekly payments to them? A. I did, yes.

40 Q. Was that the understanding, that you were to make weekly payments? A. After I got the mortgage.

Q. I am speaking of the original understanding? A. I do not know that I was to do, weekly.

Q. Now, I ask you if that was the arrangement, that you were to make weekly payments? A. I was to make payments from time to time as I could.

Q. Did they complain, when you went up there, that you had not been treating them fairly;

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that you had been paying other creditors, leaving them out in the cold? A. They thought that I should have paid them more. But as a matter of fact, I gave them all the money—

Q. Now, in question 68, "So that they were not acting straight with you?"—

MR. GIBBONS, Q.C.—I wish you would let him finish his answer.

WITNESS—I gave them all the money in the start.

MR. RITCHIE, Q.C.—What was the last payment you made to them before the chattel mortgage? Had you given them any payment within six months, do you think? A. One or two, I think.

Q. Will you swear to two? A. No; I would not be positive.

10 Q. Mr. Greene tells me that for seven months prior to this time you hadn't paid them a dollar? A. I gave them the money in the start, you know.

Q. He says that for seven months prior to this mortgage you hadn't paid him a dollar? A. I gave him the \$750.

Q. That is, on the account? A. Yes.

Q. Did you, for seven months prior to the time this mortgage was given, pay them a dollar? A. No, because I paid them all the money at the first on this.

Q. Notwithstanding that, the \$750 was to be paid and you were to pay them in weekly payments, were you not? A. As I could, you know, but I had no—

20 Q. Answer 64, "Perhaps I hadn't been paying them as much weekly as I should have done in the meantime?" A. Yes, that is right.

Q. "But I had been paying others, they thought, more than them." That was so; they complained of that? A. Yes.

Q. As a matter of fact, you had paid others had you not?

HIS LORDSHIP—That is from week to week? You want to know whether, on the running of the business he had paid others instead of Sanford.

MR. RITCHIE, Q.C.—Q. You have already told us that in the running of the business you hadn't paid Sanford's anything? A. No, I had not, I paid them \$750.

Q. That was at the beginning? A. Yes.

30 HIS LORDSHIP—Q. During that seven months, had you paid any other of your creditors? A. Yes, but not more than I paid Sanfords.

Q. But more than you had paid Sanfords during the seven months? A. Yes, they were all at shorter dates.

MR. RITCHIE, Q.C.—Q. Question 65, "What were you to pay them weekly? Answer, No definite sum?" A. That is it.

Q. Question 66, "But you were to make them a weekly payment? Answer, Yes." That is true, and that is speaking of the original understanding? A. If I could, you know. I was not bound, I had six months if I wanted to; but still they said if I made any payments in the meantime I would get a discount, and that was the understanding.

40 Q. Then question 68, "So that then they told you that you had either to make an assignment to them or to pay them up? Answer, Yes, that is true, that is what happened in Hamilton." Question 69, "If you couldn't keep your weekly payment up, you, I suppose, could not pay them up? Answer, No." Question 70, "What was done next? Answer, I think Mr. Greene asked me if I couldn't borrow the money in Toronto, or something; I said, I did not think so; I could not borrow it at a rate I could pay; in fact, I said I had mentioned it to one man—so I had— "but I could not do anything." Is that true? A. Yes.

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Q. Now, all this was stated before Mr. Lees came in, asking you about your borrowing in Toronto? A. I couldn't say whether it did or whether Mr. Lees was present there or not.

Q. Perhaps the rest of your examination will show that. Question 71, "The only way you could borrow it, I suppose, would be on your stock?" Answer, Yes, and then I couldn't succeed "in Toronto at a reasonable rate." Did you tell them that, that you couldn't get it at a reasonable rate? A. Yes.

Q. "So then you told them you could not raise the money?" Answer, No, not here." That is in Toronto—you were examined in Toronto, I believe. Then question 73, "Then what did he say?" Answer, I think he sent for Mr. Lees?" A. Yes.

10 Q. So that it was evidently after all this discussion took place that you sent for Mr. Lees? A. He said, I think the money could be arranged here, I will send for our solicitor.

Q. So that in your answer to question 74, "He said perhaps there could be a party found "in Hamilton who would advance the money." Then you say he sent for the solicitor. Now, what was the first thing that Mr. Lees said to you when he came in? A. I was introduced to Mr. Lees, and then Mr. Greene explained the position of matters to him.

Q. What was the first thing you stated in your examination that Mr. Lees had asked you? A. I forgot.

Q. He was told of course that you wanted to see if you could borrow money on the stock, in Hamilton? A. That was the purport in it.

20 Q. You had already informed Mr. Greene that you couldn't get it at a reasonable rate in Toronto? A. He suggested the mortgage, and I said I could not negotiate it.

Q. The mortgage was suggested long before Mr. Lees came? A. Yes, that is right.

Q. Because in your prior answers you know you said that the only way you could borrow the money would be on your stock? "The only way you could borrow it would be, I suppose, "on your stock?" Answer, Yes, but I could not succeed in Toronto at a reasonable rate?" A. Yes.

Q. Then when Mr. Lees came in, you said that the first question he asked you was what rate you could pay for the money? A. Yes.

Q. That was the first thing that was asked? A. Yes.

30 Q. So that I suppose it was explained to him that you wanted to borrow money on your stock that you had in Toronto? A. Yes.

Q. Was the amount mentioned that you wanted to borrow? A. Yes.

Q. And did you tell Mr. Lees the amount of stock you had? A. Yes, I think that was explained to Mr. Lees.

Q. Do you recollect Mr. Lees taking it down in a little note book he had there at the time, the details? A. I don't remember Mr. Lees; it was on the train he took it.

Q. Let us confine ourselves to what happened in Hamilton? A. I do not remember that he did in Hamilton.

Q. But you do recollect asking as to the rate of interest? A. Yes.

40 Q. And what you said was, I did not know exactly? A. Yes.

Q. Then you asked what he thought he could get it for? A. That is right.

Q. Then you say Mr. Lees asked the amount of stock we had? A. Yes.

Q. I am reading now from your answer to question 83, there you say, "I think it was Mr. Greene that asked Mr. Lees if he knew any person or had a client or anyone that would loan "money in that way. And then he asked us the rate of interest we could pay. I said I did "not know exactly; what could it be had for, did he think?" A. Yes, that is right.

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Q. "Then Mr. Lees asked the amount of stock we had, and I gave him a rough idea?"
A. Yes.

Q. "He said he had a client that they had a considerable amount of money to loan for, and was loaning, and I asked him how much he would do it for. Well, he said, I think anything of that kind should be worth about ten per cent. Well, I said, I couldn't pay ten per cent. So "Mr. Greene said, No, he couldn't pay ten per cent.; that is too much money; he ought to pay "about seven per cent." A. Right.

Q. "I said, I couldn't pay that anyway, so Mr. Lees said he would see his partner and he "would see his client and let us know; and so he disappeared?" A. So he disappeared to go to
10 a telephone, I understood.

Q. That is all true? A. Yes.

Q. That is when you were examined some months ago, detailing shortly after the date of the transaction—? A. That is quite correct.

Q. That evidence was given within a month after giving the chattel mortgage? A. Oh, yes, that is all right.

Q. Your evidence would be very much better than now about these details? A. I recollect it all right.

Q. At all events you were examined right on the—? A. Sometime in November.

Q. Yes, you were examined on the 30th November?

20 MR. GIBBONS, Q.C.—There is no dispute about these things.

MR. RITCHIE, Q.C.—Q. Question 84, "He said he would see his partner and his client and "let you know? Answer, Yes, and I should suppose it was an hour before he returned; and he "came back and said that his client, a Mr. Wilson, would advance the money at eight per cent." That is the whole thing in a nutshell? A. Yes.

Q. Is that correct? A. Yes. Perhaps not a whole hour, but over half an hour, I think.

Q. I am speaking of what you said before? A. Yes.

Q. Question 85, "And you agreed to do it, or did you agree to do it then? Answer, I did "not agree to do it then. I said I would consider the matter until the next day. I went back
30 "the next day and I did." That is correct. Then the whole gist of it was that you didn't want to make the assignment, that is you did not make the assignment they were going to press you; but they said if you would borrow the money and pay them up what was then owing them they would advance you further goods? A. You are asking me if—

Q. I am asking you if that was the gist of the whole of the conversation? A. Repeat it again, please.

Q. They wanted you to make an assignment? A. To sign the mortgage, then.

Q. They wanted you first to make an assignment to Duffield? A. Yes.

Q. That you declined to do? A. Yes, did not want to do.

Q. Because you thought you could carry on. Then they told you you would have to pay
40 them up, and if you borrowed the money on mortgage on your stock and paid them the past debt that they would advance you further goods? A. Yes.

Q. That is the gist of the whole thing? A. I either had to sign the mortgage or an assignment.

Q. You had either to pay them off or to make an assignment. They did not ask you to give them a mortgage; it was a mortgage to some man to get money to pay them off? A. Both them and Mr. Lees said—

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Q. The conversation which you had with Mr. Greene before Mr. Lees came in was about borrowing money on your stock to pay them off? A. Yes.

Q. Then, when Mr. Lees came in, the same conversation took place, that is, with reference to borrowing from some client to pay them off? Then, in answer to question 87, after saying it was put in a nutshell, "They told me if I would borrow the money and pay up the present indebtedness they would carry me on" And that was the inducement to you? A. The way they put it was if I would sign the mortgage. They did not say about paying them off.

Q. You were sufficient of a business man to know if you were giving the mortgage to Wilson—? A. I did not know it was from Wilson. I never saw Wilson, I say. I knew it was
10 Mr. Lees' client.

Q. You knew it was Mr. Lees' client that the money was to be borrowed from? A. Yes, certainly.

Q. And you knew that his name was Wilson, because you stated his name was Wilson? A. Perhaps I was. I don't—

Q. You are not sure? A. I don't remember just whether his name was mentioned or not. I know I reckoned—I knew I was dealing with a client of Mr. Lees, anyway.

Q. I see, in answer to question 84, that you expressly swore that Mr. Lees came back and said that his client, a Mr. Wilson, would advance the money at eight per cent? A. I say, perhaps he did mention Wilson.

20 Q. But you had forgotten it now until your recollection was refreshed as to what you swore to before? A. I do not remember clearly now that he did, but I suppose it must be so. I do not say that he did not. The name was not of any importance to me. I knew I was dealing with his client.

Q. Then did you think at that time that if you paid off this debt, and they advanced you further goods, you could carry on and pay off all your other creditors? A. No, sir, I know I could not after that, because I knew I could not get any more credit outside.

Q. In question 90 you were asked, "You were presented the alternative of making the assignment or raising the money on the mortgage and paying them off," that was the alternative? A. That is what I have said all along.

30 Q. Then question 91, "Whereas if you did that and had time—that is, if you had given the mortgage given on the chattel mortgage, you would be enabled to carry on? Answer, Yes." Is that true? Whereas if you did that, that is give the mortgage and had time given on the chattel mortgage, you would be able to carry on? A. Yes, because I had an understanding with Mr. Greene that when I paid \$700 that the mortgage would be allowed to stand.

Q. Do you recollect then that the question was discussed as to how much you could pay off weekly on the mortgage? A. Yes, but I—

Q. What amount was suggested? A. \$100 and interest, but it was only to go, as I understood, for a few weeks until it was reduced a little.

Q. Was \$125 mentioned? A. Yes.

40 HIS LORDSHIP—That is on the Wilson mortgage? A. Yes.

MR. RITCHIE, Q.C.—Q. You were discussing then how much you could pay off weekly on the mortgage? A. Yes.

Q. And Mr. Lees wanted you to pay off \$125, and you said you couldn't pay off that much and carry on? A. No, I said also that I could not continue paying the \$100 a week until the mortgage was exhausted.

Q. Who did you say this to? A. To Mr. Greene, and I said if it was reduced say until I

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had paid six or seven hundred dollars and the mortgage allowed to remain; and Mr. Greene said, well, I dare say that can be arranged all right when you pay a few hundred dollars. That was the exact conversation.

Q. But \$125 was mentioned first? A. Yes.

Q. Then it was reduced to \$100, and the interest? A. \$107.50.

Q. Did you make any of these payments? A. I did.

Q. How many? A. Each week until—

Q. How many payments altogether did you make? A. I think it was four.

Q. To whom did you make these payments? A. I sent up by express to Wilson, with the
10 exception of one; perhaps I paid one into Oak Hall, but I am not very clear.

Q. Do you swear that you paid one into Oak Hall? A. I made one payment to Oak Hall; I cannot tell—

Q. Will you swear that you made one payment to Wilson at Oak Hall? A. I could not without having the book.

Q. At least you did express some to Wilson? A. Yes, at least three; and I paid money into Oak Hall once.

Q. Will you swear that you paid money into Oak Hall after or on this Wilson mortgage at any time? A. I would not swear positively, Mr. Ritchie.

Q. Then you knew Wilson's address and name? A. Just Hamilton.

20 Q. You knew his first name, in order to express it to him? A. Yes, Mr. Lees gave me that.

Q. Was it on Thursday that this conversation took place in Hamilton, that we have been discussing just now? A. The first day, yes.

Q. Then after this alternative was presented to you, you said you would go home and consider it? A. Yes.

Q. You went home on Thursday night? A. Yes; I wouldn't do it then.

Q. Then you went back on the Friday, did you? A. Yes.

Q. And saw Mr. Greene, and told him you were prepared to give the mortgage? A. I went back with the express determination not to do it.

30 Q. But you went there and told him you would do it eventually? A. At last, after a long argument.

Q. You told Mr. Greene that you would do it? A. At last.

Q. Then this conversation on Friday took place with Mr. Greene? A. And Mr. Lees.

Q. Mr. Lees was not there at first? A. I don't remember just how long it was after, but he was in quite a while before he drew up the mortgage.

Q. Certainly, but you saw Mr. Greene on that day, on the Friday, before you saw Mr. Lees? A. Oh, yes.

Q. You went there? A. Yes, I did.

Q. Then he was sent for, and drew the mortgage? A. He was sent for, and we had a long
40 talk and persuaded, and after a while I was persuaded to do it.

Q. You say, in question 94, "When you went up the next day the matter was carried through? Answer, Yes, the mortgage was made out, and Mr. Lees came down with me, and "it was executed at our house?" A. That is right.

Q. Then the same night it was executed Miss Cheyne signed an order to pay the money— an order on the mortgagee to pay the money to the Sanford Company? A. Yes.

THE COURT—To pay all the money?

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MR. RITCHIE, Q.C.—To pay the proceeds of the Wilson mortgage. That is what he says; the bulk of it.

WITNESS—The whole of it. I never got any, nor she never got any.

Q. "Miss Cheyne would be the one that executed it, I suppose? Answer, Yes, and an "order made to pay the money, nearly all the money to Sanfords." A. To pay their account.

Q. And you have no doubt that was paid by Wilson? A. I do not remember that I ever got any receipt or anything of that kind.

Q. You have no doubt that was carried out; that was where the money went, to Sanfords? A. I don't know anything about it.

10 Q. But the order was then given to Mr. Lees? A. Yes, and I never saw the money, and I don't think I ever got the receipt.

Q. So that what do you speak of when you say that they got all, except what was necessary to pay the expenses and the re-insurance; what was that; to insure the goods in the name of Wilson? A. Yes, I understand that the companies have a rule that when a chattel mortgage is given they cancel their policy, and new policies have to be taken out in consequence, and Mr. Lees attended to that; but I don't think the money for the policies was included; I think it was enough for them; it was enough to cover his expenses, and he afterwards sent me a bill for the insurance.

Q. Who sent you a bill for the insurance? A. Mr. Lees.

20 Q. And did you pay that? A. No.

Q. When Mr. Lees came down to Toronto to get the mortgage executed, did he go into the store to take a look at the stock? A. No, sir, he went as far as he could. We went to the door, and we could not get in.

Q. Question 122, your answer is, "Yes, he first came down and took a cursory glance at "the stock in the store?" A. Looked in through the store door.

Q. That is what you mean by a cursory glance at the stock in the store? A. He said that would do.

Q. He went down to look and see if the place was in existence, at all events? A. Yes, that was all. Of course, it would take you a good while to make—

30 Q. You came down on the train, you say, with Mr. Lees? A. Yes.

Q. And you say there was a discussion then with him as to other creditors, that they could not attack the transaction? A. Yes.

Q. What were you discussing then, as to whether it could be set aside as a preference or not? A. Yes.

Q. As to whether it could be set aside as a preference of the Sanford people over the other creditors? A. Yes.

Q. And he assured you that it could not be, that it would be perfectly valid; and that was the extent of the discussion, was it? When was it that he mentioned something about Wilson and some suit that it came up in? A. That was in Mr. Sanford's office.

40 Q. Was that when Mr. Greene was there? A. Yes, Mr. Greene was there.

Q. And what were you discussing then, as to whether it could be attacked as a preference? A. I asked then what would become of the other creditors, what could I do with them.

Q. Were you asking as to whether the chattel mortgage could be set aside as a preference, whether it could be successfully attacked? A. I don't know that I put it in those words; but I said, what could I do with the rest of the creditors. And that was the reason why I didn't sign it the first day.

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Q. Did you have that conversation when Mr. Greene was there alone, or was it after Mr. Lees came in? A. No.

Q. You say you had it in both places? A. Yes.

Q. Both when he was there and when he was not there? A. Yes.

Q. And you were discussing the question as to whether this transaction would stand or not? A. Yes.

Q. You knew the effect, I suppose, as a business man? That the effect of giving a chattel mortgage would be to prevent the other creditors coming in unless it would be attacked successfully? A. I suppose so; I never had much to do with financing affairs.

10 Q. You have given chattel mortgages before? A. Only on furniture.

Q. And on stock have you not, too? A. No, sir, I don't think so.

Q. As a matter of fact, one reason that they insisted upon getting this security was that they claimed you had paid \$300 of their money, after the Wilson mortgage, paid it off in reduction of a chattel mortgage on the furniture? A. Who did?

Q. I say the Sanfords claimed that after the Wilson mortgage was given, instead of remitting them for the new goods, you were using the money in paying off a chattel mortgage on your wife's goods? A. I had a distinct, definite understanding with Mr. Sweet.

Q. Who did? A. I did. I told him I was going to do it.

Q. You paid off \$300 on your wife's household goods out of the proceeds of the store?

20 MR. GIBBONS, Q. C.—He says he had an arrangement with Mr. Sweet that he could apply it.

MR. RITCHIE, Q. C.—We claim he was diverting funds to pay off his wife's debts.

WITNESS—My wife had no debts in it.

Q. It was a chattel mortgage of your wife's? A. Yes, to Mr. Willis.

Q. And you paid off the \$300 in reduction of that? Now, when they came down after they got this second chattel mortgage which was filed, after that didn't they tell you that the reason that they insisted on getting it was that you had been diverting the funds in that way? A. Mr. Greene did; but I had a permission from the manager to do it.

Q. Who was Mr. Sweet? A. He is the business manager of Sanford & Co.

Q. In Toronto? A. In Hamilton; I told him in the store that I was going to pay the
30 \$300.

Q. And out of what were you going to pay that? A. Out of the money we took in.

Q. Out of the proceeds of the goods? A. Yes.

Q. When was it you told Mr. Sweet that? A. At least a month before we had the chattel mortgage.

Q. Then you said he mentioned some case; you didn't think of that when you were examined before? A. Perhaps I wasn't asked it.

Q. None of these questions about effecting compromises with creditors ever came up before? A. I did not have any examination like you are putting me to now.

Q. Oh, yes, you were examined here at the instance of the other side? A. I answered
40 every question.

Q. And you said nothing about any conversation coming down to the train, when you were examined before? A. I was not pressed like I am now. I answered all the questions Mr. Wright asked me. I feel just the same now as I did then. I was willing to answer anything.

Q. Some time after you had given this chattel mortgage, did you go to see Mr. Parkes? A. I never went to see Mr. Parkes until after they had pressed me with that assignment.

Q. Did you have any conversation with Mr. Parkes as to whether this could be set aside as

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a preference? A. No, I never asked him anything; he volunteered things. The reason I went to Mr. Parkes was because they said it was Parkes they understood was going to bring those actions the next morning, and I went down to see him, and he said it was a falsehood, that he had never said so.

Q. Do you recollect telling anyone that you had found out from Mr. Parkes that it could not be successfully attacked because there had been an almost similar case? A. He said so at once.

Q. Did he give you the name of the case? A. He got a book down and read it out. That was after it had been given, of course.

10 Q. He threw out that suggestion himself? A. Yes; I don't know what made him do it. I did not ask him to do it.

Q. What led you to go to Mr. Parkes? A. To see whether in fact he had such instructions or had said he was going to.

Q. That was before you went up to Hamilton at all? A. That was the morning before I went, and Mr. Parkes said it was a falsehood.

Q. It was then that he read this case to you? A. No, I think not. It was after that, I think.

Q. What led you to go after that to him? A. He was worrying me for a payment of \$110 to John Calder, and he kept calling me up by telephone, and I would go down and see him and
20 come back again. That is all.

Q. Then how did the discussion arise about the case? A. He had heard that I had given this chattel mortgage, you know, and he was very sore about it, and talked a lot about it. I did not ask him anything.

Q. Then how did he come to say that it could not be attacked? A. I could not say; it was just his own. He was giving me a great lecture about it, you know.

Q. And he took down the volume of reports and read it to you? A. Yes.

Q. And he told you the name of the case? A. Yes, he said this same man Lees and this same man Wilson.

Q. And he read you the name of the case, and he read the case there to you? A. Yes, he
30 did; that was after all had been done.

Q. And did you tell him that you had known of that case before you gave the mortgage? A. Oh, no, I didn't discuss anything with Parkes. He was merely, as it were, abusing me, that is all.

Q. When he was reading it to you, you did not tell him you knew anything about it? A. No, I did not say anything to him.

Q. And you led him to believe that you did not know anything about it? A. I did not know that I did. I don't know whether I did or not. I did not pay any attention to what he said. I did not consider it was any of his business, anyway, because Mr. Calder told me he had not given him any instructions; he was acting on his own.

40 Q. You know Mr. Scott, who is here? A. Yes.

Q. Do you recollect, after you left Parkes' office, going over to Mr. Scott's and telling him of this conversation which you had with Mr. Parkes? A. I went into Mr. Scott for something that Mr. Lees told me to go there about, and I mentioned the conversation with Parkes at the time.

Q. This was after you had seen Parkes? A. Yes, the next day or so.

Q. The next day after you had seen Parkes you went in and saw him, and told him that

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Parkes had called your attention to a case that was almost similar? A. I told him Parkes had given me a lot of abuse.

Q. Did you not tell him about the case that Parkes had told you about? A. Likely I did.

Q. So that you thought you were giving him some information? A. Oh, no, I knew as a lawyer he would know all about it.

Q. You knew, as a layman, you did not know it before? A. I knew from what Mr. Lees told me.

Q. Then you knew it after what Mr. Parkes told you, and then you went around to tell Mr. Scott? A. No, I did not. I do not know that he did not mention something about Parkes
10 before I did.

Q. Did you also tell Mr. Scott that you were a little surprised to find that there was a case exactly in point? A. I do not remember it.

Q. Will you swear you did not? A. I don't hardly know how to answer that, because Mr. Lees told me of a case, you know.

Q. You have said that before. We have heard that in court to-day for the first time. But after you went to Mr. Parkes—? A. I did not tell him that I was surprised, because I was not surprised, because Mr. Lees had told me.

Q. Didn't you say to him that you were surprised because there was a case identical in point? A. No, because I was not surprised. Mr. Lees had told me all about it.

20 Q. Then what he told you was, that if money was borrowed on mortgage to prefer a creditor, and paid that creditor, that it could not be attacked; is that the substance of it? A. Parkes, you mean?

Q. Yes? A. Yes, that is the substance of it.

Q. Did you ever give any written statement of your assets and liabilities to anybody? A. I do not know just now, Mr. Ritchie; I could not remember.

BY MR. GIBBONS, Q.C.—Q. I had understood, in the first place, that your daughter had had this equity of redemption. I believe it was your wife? A. Yes.

Q. So your daughter never had anything at all? A. No.

Q. All she had in the world was the money that was paid to Sanford at the start? A.
30 That was all.

Q. So that if you had held your own in the business that would be all the nominal surplus? A. Yes.

Q. The business for the first year, I suppose, would not naturally pay? A. No.

Q. Then this statement of assets and liabilities was not correct? You had other liabilities? A. Oh, yes; they knew that there were other liabilities.

Q. You did not profess to give them all? A. No; only from memory.

Q. As a matter of fact the liabilities at this time were a good deal more than \$4,600 or \$4,700? A. Yes.

Q. I see on this memorandum Burns & Lewis are put down at \$500. As a matter of fact
40 they were over \$1,300? A. Yes, I told them that, that there was over \$800 that I had not put down there.

Q. So that your liabilities must have been quite equal to your assets at one hundred cents, if not more? A. I would say quite equal anyway.

Q. Burns & Lewis' bills had come due and had been renewed? A. Yes.

Q. And another considerable bill, I believe, was maturing in a few days? A. Yes.

Q. The others at short dates? A. Yes.

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Q. All your liabilities matured in a few weeks? A. Yes.

Q. Did Mr. Greene know that? A. Oh, yes, of course, he knew all.

JAMES. D. WILSON, sworn, examined.

BY MR. GIBBONS, Q.C.

Q. You were a merchant tailor, I believe, doing business in Hamilton? A. Yes.

Q. You know the firm of Walker, Scott & Lees? A. I did know the firm of Walker, Scott & Lees, and Scott, Lees & Hobson now.

Q. Yes, you knew the former firm of Walker, Scott & Lees? A. Yes.

Q. They were your solicitors for many years? A. Yes.

10 Q. Your general solicitors? A. Yes.

Q. And Scott, Lees & Hobson continued to be? A. Yes.

Q. You lent money, I believe, mainly what money you did loan upon real estate? A. Yes.

Q. And you have had two or three instances of chattel mortgage? A. I have, yes.

Q. All through Messrs. Scott's firm? A. Oh, I have had from other firms as well.

Q. Who? A. Smith & Martin.

Q. When was that? A. Within the last—I had one loan as late as last week; Farmer & Farmer last week.

Q. It is recently that you have gone more into chattel mortgages, because, I see when you were examined before that you had just had several, you said? A. Yes, several.

20 Q. Two or three? A. Yes.

Q. Two or three up to that time? A. It was not chattel mortgage last week.

Q. I am talking about chattel mortgage? A. You said mortgage—mortgage on real estate.

Q. I am not half as smart as you are, so I stand corrected. I am talking about chattel mortgages. How many chattel mortgages have you ever taken in your life? A. I couldn't say.

Q. Two or three? A. Yes.

Q. All through Mr. Scott? A. Well, I could not say whether they were all through Mr. Scott or not.

Q. Do you remember taking any through anybody else? A. No.

30 Q. All transactions of the same character, weren't they? You had previous litigation, hadn't you, similar to this suit, by the Sheriff of Goderich? A. I did.

Q. A well known case of Gibbons v. Wilson? You are the same Wilson? A. Yes.

Q. Just as innocent now as in that case, I suppose? A. Yes.

Q. You hadn't got any fuller of guile; you still remained as simple minded a man as you were in Gibbons v. Wilson? A. Yes, I should say so.

Q. You were very simple then, I see, by your examination in Gibbons v. Wilson. You had never seen the stock, had you? A. Gibbons v. Wilson.

Q. You remember that suit; where was that stock? A. It is some years ago.

Q. You remember it well? A. I do not.

40 Q. Where was the stock of goods that you lent the money on? A. I could not say at the present time.

Q. You haven't any remembrance; you never saw the stock anyway? A. No.

Q. You never saw this stock? A. No.

Q. On which you lent this \$4,775? A. No.

Q. Never heard of the Cheynes before? A. No.

Q. Didn't know whether it was a man or a woman you were lending the money to? A. Oh, yes, I knew.

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Q. You told us before that it was the wife of this man Cheyne? A. Yes.

Q. You did not know it was the daughter? A. No.

Q. You never saw the goods; you trusted entirely to Mr. Lees and Mr. Scott? A. To Mr. Scott, yes.

Q. Who was your solicitor and adviser, Mr. Scott, of the firm of Scott, Lees & Hobson? A. He wasn't my solicitor or adviser in that particular.

HIS LORDSHIP—Q. You say you trusted to Mr. Scott in this Cheyne case? A. Yes.

MR. GIBBONS, Q.C.—Q. Scott, Lees & Hobson? A. Yes, he was my legal adviser in that case.

10 Q. He was your general legal adviser for years? A. Yes.

Q. You told us in this other case it went so far that you had a general guarantee from him that all the securities that he had were right; is that so? A. A written guarantee?

Q. No, a verbal guarantee? A. I had not.

Q. "I have a general guarantee from my solicitors"—?

MR. RITCHIE, Q.C.—What is my learned friend reading from?

MR. GIBBONS, Q.C.—From his previous examination in another suit. We can ask him if he said that at another time, surely.

HIS LORDSHIP—You may read it and ask if he said that.

MR. GIBBONS, Q.C.—Q. Did you state in the previous examination in *Gibbons v. Wilson* 20 that I have the printed Appeal Book of here, "I have a general guarantee from my solicitors that all my loans would turn out right?" A. How long ago is that; some years ago, isn't it?

Q. Yes? A. I don't remember.

Q. Did you have a verbal guarantee from him? A. No.

Q. Never had? A. No.

Q. Nothing of that kind? A. No.

Q. Did you say this, "In the event of my losing on this transaction, Mr. Scott, my solicitor, would be responsible to me." That is in *Gibbons v. Wilson*; do you remember that suit perfectly well; is that what you said in that suit? A. I could not say.

Q. Was that true, "In the event of my losing on this transaction, Mr. Scott, my solicitor, 30 "would be responsible to me?" A. I may have, yes.

Q. Was it true? A. No doubt it was.

Q. "I have a general guarantee from my solicitors that the loans will turn out all right." Did you say that? A. I suppose I did if it is there.

Q. Was it true, if you said it? A. Yes.

Q. Has it continued through? A. No, I don't know.

Q. Was there any break of it? When did the break occur? A. There never was any written guarantee or verbal.

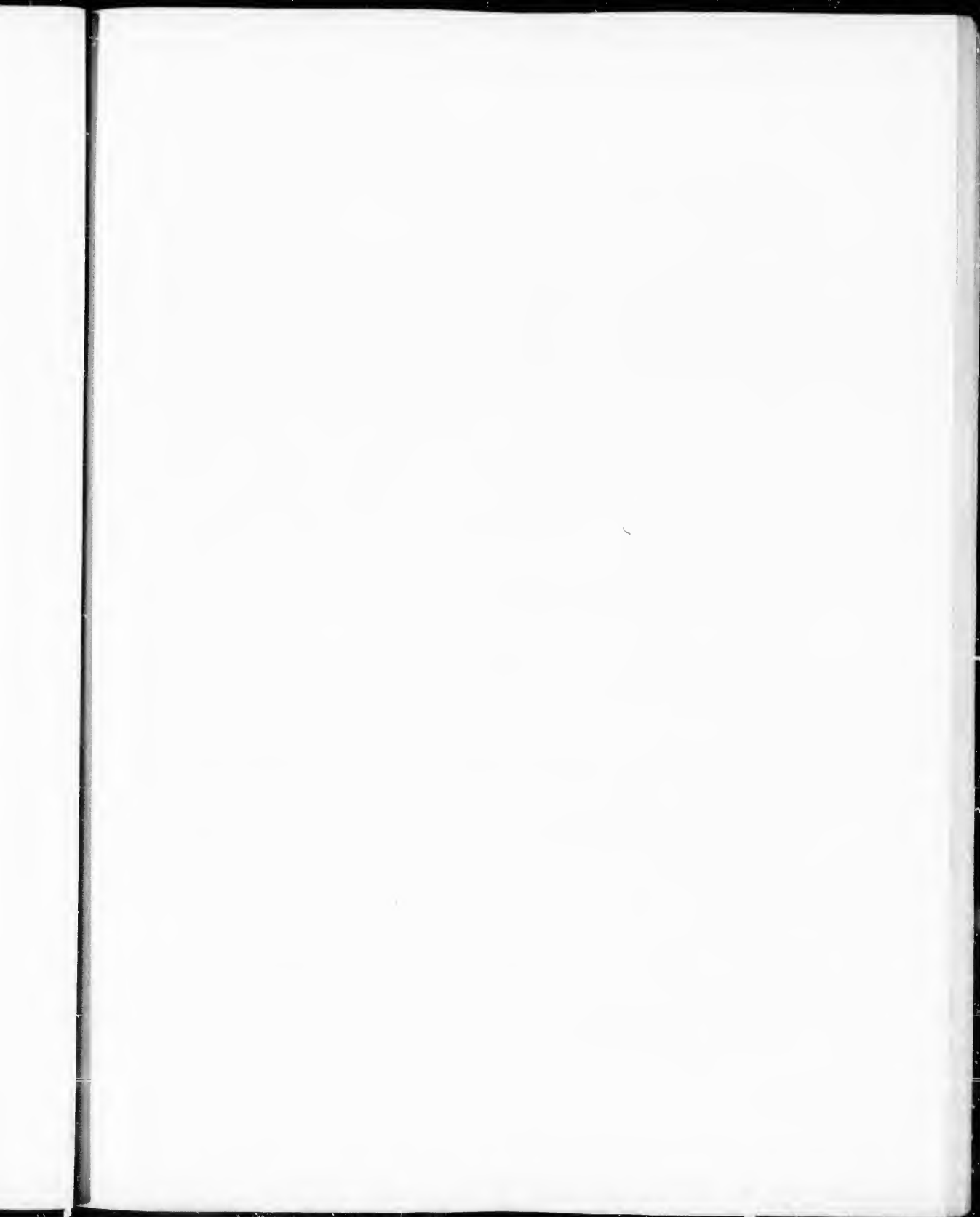
Q. Then this what you said before was untrue, is it? A. Well, I cannot recollect whether I said it.

40 Q. You just said to me a minute ago? A. I don't remember saying it six, seven, eight or nine years ago.

Q. I read it to you, and you said that no doubt you did say it, and no doubt it was true? A. No doubt it is true.

Q. We will leave it at that, for if we start again we will get off from it. You employed no other solicitor than Messrs. Scott, Lees & Hobson in this matter? A. Not until I was examined,

Q. Then you went to Mr. Martin? A. Yes.



Q. At whose suggestion? Whose recommendation? Mr. Scott's? A. No.

Q. Who sent you to Mr. Martin? Who suggested Mr. Martin, that you had better get another solicitor? Whose suggestion was that? A. I could not say.

Q. Up to that time Messrs. Scott, Lees & Hobson had been your solicitors generally? A. Yes.

Q. You never before or since the giving of this mortgage saw this stock? A. No.

Q. Nor saw the Cheynes? A. No.

Q. In the Wilson case you hadn't any idea? I see in that case the money went to John Stewart, Son & Co.? A. I couldn't say at the present time. I do not remember.

10 Q. I see in that case you said you hadn't the slightest idea who it was going to; you made no inquiries; you did not make any inquiries in this? A. I did not.

Q. A loan was being asked from you for \$4,775 on a merchant's stock in Toronto? A. Yes.

Q. You made no inquiries whatever as to why it was wanted? A. I asked—I was told it was wanted on chattel mortgage on a stock.

Q. But you made no inquiries whatever as to what was to be done with the money? A. No.

Q. Never asked a single question? A. No.

Q. I see you did not ask a single question in the other case up at Goderich either? A. I don't suppose I did.

20 Q. You had another case of this kind, too, at Niagara Falls, hadn't you, with a man named McGuire? A. I believe I did.

Q. In which Scott, Lees and Hobson used you in the same way—you did not make any inquiries in that case? A. I don't know as I did.

Q. In this case not one single word, simply—

HIS LORDSHIP—That worked well in the other case, didn't it?

MR. GIBBONS, Q.C.—I suppose it did, my Lord.

Q. So that you did not want to inquire; you found it was better policy not to inquire in the other case? A. I took Mr. Scott's word for it that it was between ten and eleven thousand dollars.

30 Q. And you thought it was not wise to make any further inquiries? A. I did not think it was necessary.

Q. You had been examined in that previous suit and you knew it was a bad thing to make inquiries? A. I did not know that.

Q. Who did you give this cheque to? A. The cheque, to Mr. Scott.

Q. Who attended to the registration of the mortgage? A. I suppose Scott, Lees & Hobson.

Q. Who kept it after it was filed? A. I had a copy of it.

Q. Who attended to the insurance of the stock, do you know, or was it attended to? A. I think Mr. Lees.

Q. Did you get the policy? A. I did, two policies.

40 Q. Who attended to the insurance? A. I think it was Mr. Lees.

Q. You left all that matter to your solicitors? A. I did.

Q. Who searched, do you know, to see whether there were any prior encumbrances or executions? A. I could not say.

Q. You left that to Scott, Lees & Hobson? A. Yes.

CROSS-EXAMINED by Mr. Ritchie, Q.C.

Q. You are a retired merchant, I believe? A. I am.

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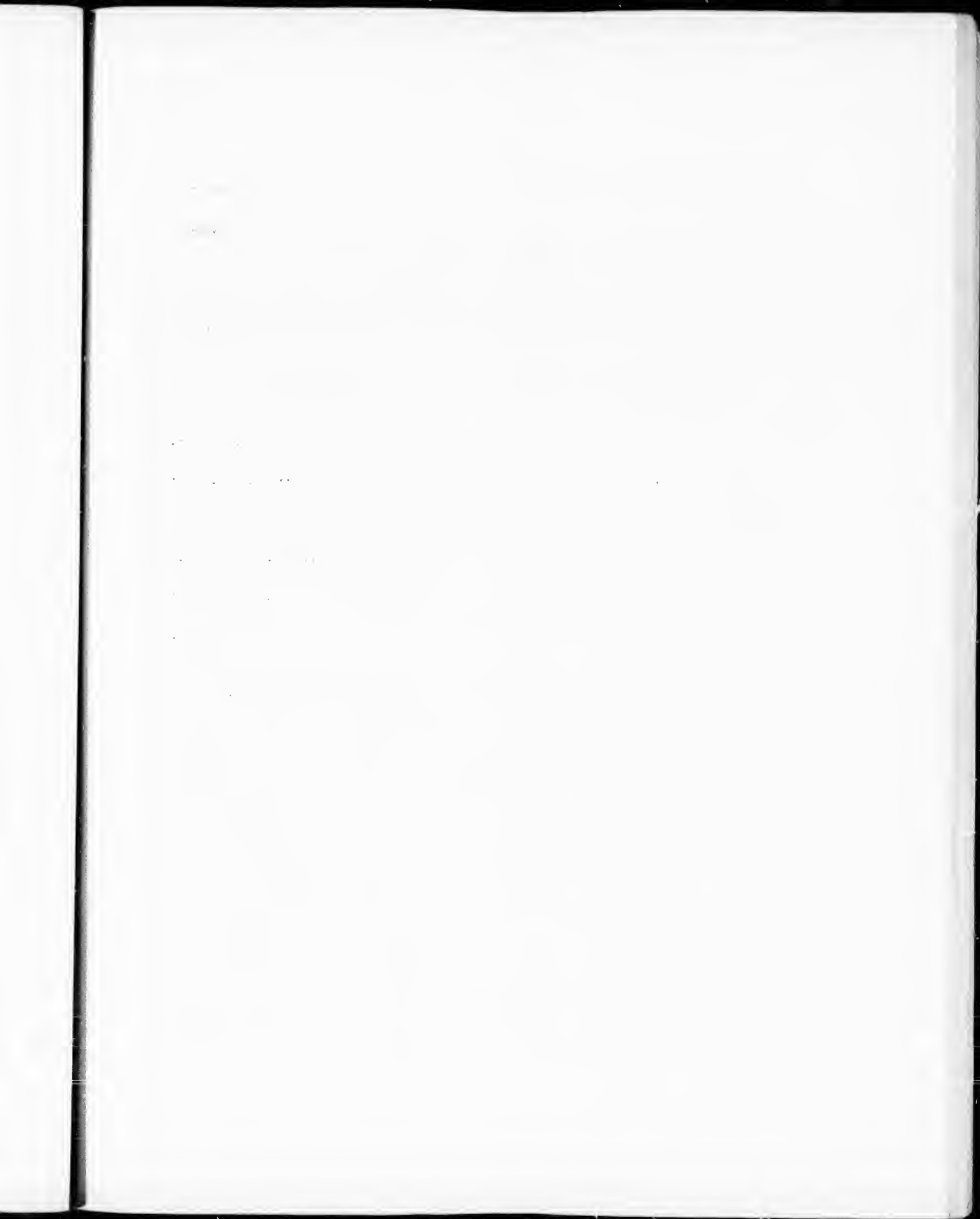
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- Q. And your source of income is from investments on real estate or chattel mortgages?
A. And stocks.
- Q. For how many years past have you been lending on real estate securities and mortgages?
A. Fifteen or eighteen years.
- Q. Now, will you tell us shortly what transpired with reference to this particular loan? Did you ever see Mr. Cheyne in connection with it? A. I did not.
- Q. Did you ever see any of the Sanfords in connection with it? A. I did not.
- Q. Who was the person you did see? A. Mr. Scott.
- Q. Will you tell us, did Mr. Scott go to see you? A. Mr. Scott came to my store and told me he had a first-class loan on a clothing stock in Toronto, retail merchant tailor and clothing stock of ten or eleven thousand, which he wanted \$4,775 on.
- Q. Did you know anything about the clothing business yourself? A. I have been in the merchant tailoring business all my life.
- Q. That is the business you had been in before you retired? A. Yes.
- Q. And did he have any details of the stock? A. Yes, he showed me how much the stock was.
- Q. Did you go over that with him? A. I did, between ten and eleven thousand dollars.
- Q. What was the class of stock principally? A. There was—
- Q. Were they staple articles? A. Yes, cloths and clothing.
- 20 Q. What you call staples? A. Yes.
- Q. Did he tell you who owned it? A. Yes, Mrs. Cheyne.
- Q. You thought it was Mrs. Cheyne? A. Yes.
- Q. Did you say anything to him? A. I asked him if it was good security, and he said it was. I asked him was it likely to be closed down soon, and he said, no, it was going to be a running concern, that there was \$1,200 new goods going in inside of a week; between a thousand and twelve hundred dollars.
- Q. You say you did not make any inquiry about as to what was to be done with the money? Did he make any statement to you as to what the money was required for? A. No, he did not.
- Q. Then what further discussion took place? A. Between Mr. Scott and I?
- 30 Q. Yes? A. Mr. Scott asked me if I would accept the loan, and I said I would.
- Q. Was that after he had told you it was a good loan? A. Yes, he told me it was a good loan. I asked him how it would be paid. He said it would be paid weekly, in payments of \$100, with the interest paid at each time of the payment of the \$100.
- Q. And what about the rate of interest? A. Eight per cent. I asked him what the rate was and he said eight per cent.
- Q. Then what happened after that? A. Why, not the following day, but the day after, he came in and I gave him a cheque for it.
- Q. The following day or the day after? A. Not the following day. When he spoke to me first it was the 31st October.
- 40 Q. What day of the week was that, do you recollect? A. It was on a Thursday, between five and six o'clock at night. The following day was the first of November, I was in Buffalo; on the Saturday morning, that was the 2nd November, Mr. Scott came in and got a cheque from me for the amount.
- Q. Are you sure of the date, the mortgage is dated on the first; do you know what date it was?
- MR. GIBBONS, Q.C.—He says the day, and you should not change it.



A. I gave the cheque on the second of November.

MR. RITCHIE, Q.C.—Was your cheque for the exact amount? A. Yes, it was for the exact amount.

Q. Then what was the security that you were relying on when you made that advance?

A. The security of the stock of cloths, clothing and assignment of book debts.

Q. That is included in it, is it? A. That is included in it.

Q. Did you understand that there was any other security to you? A. No.

Q. Did you not hear of a guarantee which is said to have been given about the same time from Sanford Manufacturing Company to you, a guarantee which was handed to Mr. Lees?
10 A. No.

Q. Did you ever hear of that? A. I did not.

Q. You never saw it, and never heard of a guarantee? A. No, I never saw it.

Q. If Mr. Lees got it there was no communication made to you about it? A. No, none whatever.

Q. Was this a bona fide actual advance made by you upon the security of that stock? A. It was.

Q. Was there any agreement or understanding of any kind other than was shown on the document itself? A. None whatever; no.

Q. Can you recollect whether anything else passed between Mr. Scott and yourself other
20 than what you have told us, that he gave you the details of the stock? A. The details of the stock, amount of the stock, and he told me the rate of interest, and how it was to be paid. That is all.

Q. Did you have any discussion with him about the liabilities of Cheyne, or Miss Cheyne? Did he ever say anything about that at all? A. I think not.

Q. Then did you have anything communicated to you by Mr. Scott in connection with this loan other than what you have told us now? A. None whatever.

Q. How many payments were made to you under that mortgage? A. Five.

Q. Which are the five—are you speaking of the last one? A. Four without the last.

Q. Did you get all these payments yourself? A. Direct to me?

30 Q. Yes, of \$100—did they come to you? A. I understand the first one was sent to Scott, Lees & Hobson; the others were remitted to me direct.

Q. Then I see that you got on the 21st December—? A. That was the principal, and that was the interest.

Q. What do you call this book; your mortgage book? A. Yes, that is my private investments.

Q. This is the book containing the memorandum of your own private investments? A. Yes.

Q. The first payment is headed Eliza B. Cheyne \$4,775, 2nd November, 8%. Then on the 14th November \$100 was paid? A. \$100 and \$7 interest, but the interest was a little—

40 Q. I see you have got separate columns here, one showing payments of principal and one showing payments of interest? A. Yes.

Q. And there were four payments of \$100, and the interest on each payment; of course, the interest varying as it was reduced? A. Yes, the first payment was a little short; it was a little over, because there was more than the seven days.

Q. On the 21st December you got \$4,439, balance of principal, and \$17.89 interest? A. Yes.

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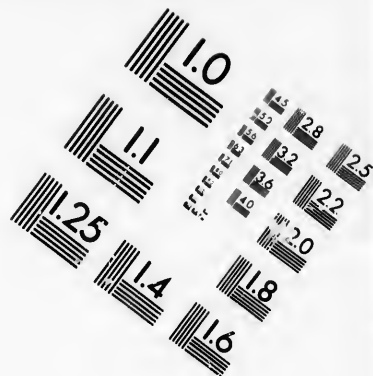
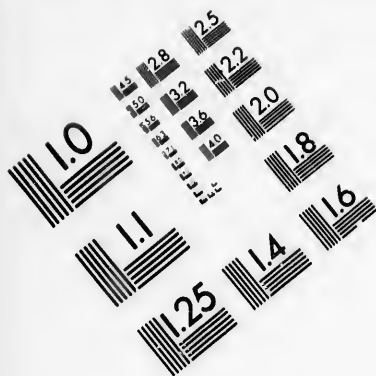
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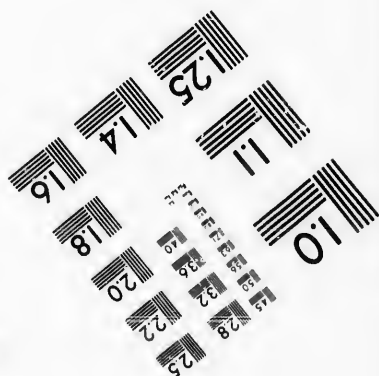
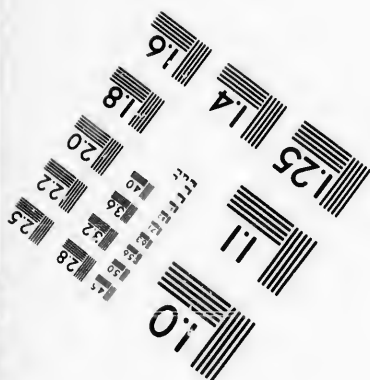
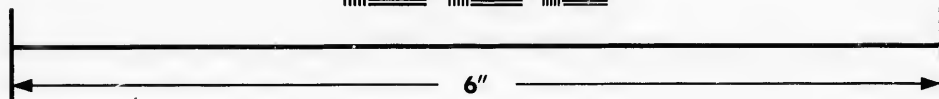
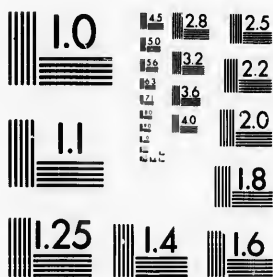
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**IMAGE EVALUATION
TEST TARGET (MT-3)**



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Q. From whom did you get that? A. This \$4,439?

Q. Yes? A. I got that from Mr. Lees.

Q. Did you ever take any proceedings under this mortgage of yours to realize? A. I did not.

Q. Did you ever instruct any proceedings to be taken to realize? A. I did not.

Q. When did you first hear that the goods had been sold? A. The first I heard was—

Q. Did you know anything about the sale? A. I did not.

Q. Then you did not hear anything about it until after the sale took place? A. Not until after the sale took place.

10 Q. Have you learned since then where the goods were sold? A. That they were sold?

Q. Yes, you have learned since then that they were sold? A. Oh, yes, I did, yes.

Q. Then you were paid off the balance of the mortgage? A. I was, yes.

MR. GIBBONS, Q.C.—All this dealing with the stock was after the action was brought; a motion was made for an injunction to prevent dealing; the allegation was made that the defendants were perfectly good, and, as I understand, the rule is where the parties are good and proceedings are pending, the Court would not interfere by injunction; and in this case, by consent, it was arranged that an undertaking should be given; the only mortgage existing, and the only one known of, was that to Wilson, in which it was undertaken that he would not proceed in the meantime, and if he did realize to keep an account and hold the proceeds of the sale of the said 20 goods and chattels, subject to the further order of this Court. The other mortgage was given after the action was brought.

MR. RITCHIE, Q.C.—I submit no case has been made. If your Lordship will just have it noted, I will call Mr. Lees and discuss it afterwards.

WILLIAM LEES, sworn, examined.

BY MR. RITCHIE, Q.C.

Q. You are a member of the firm of Scott, Lees & Hobson? A. I am.

Q. Of Hamilton? A. Yes.

Q. And I believe that you had something to do with procuring an advance from Mr. Wilson on a stock of goods in Toronto, owned by Miss Cheyne? A. I had.

30 Q. What was the first you heard of it? A. It was on Thursday, October 31st, when Mr. Greene spoke to me about the matter.

Q. Mr. Greene is of the firm of the Sanford Company? A. Yes.

Q. Had your firm done business with the Sanford Co. before as solicitors? A. We had.

Q. Will you tell us now what was said? A. I discussed the matter with Mr. Greene.

Q. Where did this discussion take place? A. It took place in our office, I think, the first discussion. I think he came in and I was busy, and he asked me if I would come over with him to his office.

Q. He asked you at all events to come over to his office? A. Yes, or over the telephone. There were two days, and I cannot remember just now how I came to go over, whether it was 40 through the telephone or whether he asked me in the office. I was over there on Thursday and on Friday.

Q. At all events where did the discussions take place with reference to the matter, in your office or in the office of the Sanford Company? A. In the office of the Sanford Company.

Q. When you first went over there on the Thursday, who did you see there? A. I saw Mr. Greene and Mr. Cheyne and Mr. Duffield.

Q. Was Mr. Duffield there all the time? A. No, only part of the time.

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Q. Then what was the first thing that was said to you? A. Mr. Greene told me that the firm of Cheyne & Co. owed them a large amount of money and that he was not able to make payment of it. That the liability was in that shape, that it was a large amount, or mostly all due, I understood, although I did not see particulars of the amount at that time. I just had the lump sum, and he asked me what I thought had better be done about the matter and the result was that I suggested it would be a good idea if Mr. Cheyne could procure a loan on the stock and pay them off with the proceeds. Then we went in, or Mr. Greene, I think, went in himself first to see Mr. Cheyne, and afterwards I went in.

Q. Then when you went in, what took place? A. Mr. Cheyne asked me if I thought I could get them a loan on the stock. I told him I did not know, that the only thing I could do would be to try; and he asked me about what interest I thought it could be obtained for, and about what the terms of repayment would be, etc. So I asked him how much he thought he could pay a week, and he thought he could pay \$125, a week; and he said he was willing to pay eight per cent. interest, and that he would like to ascertain if I could get a loan.

Q. He said he could pay how much a week? A. \$125, a week. However, he then left; that interview was a comparatively short one while I was there. And he said he thought he could possibly get the money in Toronto, and he came down to Toronto, and returned the next day, saying that he had been endeavoring to get an advance in Toronto but hadn't succeeded, and that he would like if I could raise the money for him. During that interview on Thursday, however, I called up my partner, Mr. Scott, on the telephone, and I stated the circumstances, or rather the amount of stock as taken down on a slip which was handed to Mr. Wilson; and I called that down to Mr. Scott over the telephone, and he said that he would see what he could do with regard to it; and he called me up a while afterwards, and said that if that stock was there that the matter could be arranged.

Q. Did you take a statement of the stock? A. I did.

Q. What on? A. I took down in a note-book which I had.

Q. From whom did you get that? A. From Mr. Cheyne.

Q. At that time? A. Yes, I took it down from him.

Q. It makes a total here apparently of \$10,140—\$5,000 clothing, \$2,500 tailor's goods, 30 gents' furnishings \$100, fixtures \$840, book debts fully good \$800, never less, a total of \$10,140. Now, did you take that down at that time from him? A. I did. That is the only information I had as to that.

Q. Did you ever get any statement from Mr. Cheyne as to what his liabilities were? A. No, his liabilities were not discussed while I was there.

Q. Did you at any time until after the chattel mortgage was executed, know the amount of his liabilities? A. No, I did not.

Q. From him or anybody else? A. I did not know it for two or three weeks afterwards.

Q. You say it was not discussed while you were there? A. No.

Q. And you were not shown a statement of liabilities by anybody? A. No, I was not.

40 Q. Then you say that after asking you if you could get the loan and discussing it and talking about the rate of interest that he said he would go to Toronto? A. Yes.

Q. And that he might get it there? A. Yes.

Q. Then what happened the next day? A. The next day he came back to Hamilton, and I was called over to Sanford's, and Mr. Cheyne said he would like to get that loan but that he would like to reduce the payment to \$100, a week. He said he had been figuring the thing out, and if the payments were reduced to \$100, a week, he thought he could pull through satisfactorily.

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He said he thought he could pay \$125, but he wanted to make sure that he would have no difficulty in paying the \$100, a week.

Q. Then what did you do then? A. I went home. I arranged to go to Toronto with Mr. Cheyne on the 7 o'clock train, and he remained at Sanford & Co.'s, giving an order for his goods, picking them out he went back into the warehouse.

Q. Did you understand, or did you know that there was some arrangement about furnishing other goods? A. Mr. Greene told me he was willing to keep him supplied so long as he was satisfied with the way Mr. Cheyne was conducting the business.

Q. I see that there was some document drawn up with reference to the giving of security
10 for future advances? A. Yes.

Q. That was drawn by you at the time, was it? A. It was.

Q. When was it executed? A. Executed the same night as the chattel mortgage.

Q. Then you came down to Toronto, and what time did you get here? A. About half-past
eight.

Q. Did you go to the store to look at the goods? A. Yes.

Q. Was the store open? A. No, the store was not open. Mr. Cheyne said he hadn't his key, but he thought his clerk would be there; when we got there his clerk had gone. However, the store was lit up with electric light, and we could see from back to front.

Q. Did you, prior to the time that the chattel mortgage was executed, hear anything about
20 a demand for an assignment for the benefit of creditors? A. I never heard of that.

Q. Was there any discussion about that in your presence? A. That was never mentioned. I did not know that Mr. Duffield had been in Toronto, even.

Q. Mr. Cheyne said in effect that in your presence the question was discussed as to what would become of the other creditors in case this mortgage was given, and that you replied to that, to the effect that the other creditors might kick all they wanted, that they could do nothing, and that after the chattel mortgage was given he could compromise with the other creditors when he got ready? A. I never had any such discussion with him at any time. Mr. Cheyne tried to impress me with the fact that he was in good shape and would pull through; and he told me
30 that Calder's liability was under \$200, and that was the only liability that was mentioned.

Q. You knew, of course, of the Sanford liability? A. Yes, apart from that, of course.

Q. Now, he says that on the way down on the train with him on the Thursday or Friday night, whatever night it was, that a somewhat similar conversation took place, a conversation to that purport? A. There was no such conversation. We were sitting in the smoking compartment of the Pullman and there was another passenger there, and the three of us were talking nearly all the way down.

Q. He also says—he does not say that he told you the details, but he gave you the lump amount of his liabilities as being something like \$5,000 outside of the Sanford claim? A. He never mentioned that.

Q. Did he ever mention it in your presence at any time? A. No, he did not; he told me
40 yesterday, in conversation out there, that he never mentioned anything to me but the Sanford liability and the Calder liability.

Q. He also said that there was some statement made, while you and Mr. Greene were there, to the effect that he couldn't pay this \$100, during the whole period over which the mortgage was, that he was only to pay it—for to pay six or seven hundred dollars and that then Greene had agreed to get an extension of time. Was there anything of that kind said? A. There was nothing said at that time, but the next time I saw him—I think it was over the

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telephone—he asked me if I thought that when the loan was reduced down to \$3,000, whether Mr. Wilson would be willing to let the matter stand at that figure. I told him I did not know, that it would be a matter for Mr. Wilson to decide, and I supposed it would largely depend upon the state of his stock at that time.

Q. When was that conversation? A. That would be a couple of weeks afterwards.

Q. I want to know, even before the taking of the chattel mortgage, was there any discussion at which you were present when the question of having the mortgage extended after \$500, or \$600, or \$600, or \$700, had been paid? A. No, it was never discussed at all.

Q. But a couple of weeks afterwards you say he did, over the telephone, ask you if Wilson would consent, when it was reduced to \$3000, to consent to have it stand for a longer period?

A. Yes.

Q. Did you have any conversation with Mr. Wilson yourself in connection with the loan?

A. I had none.

Q. That was between your partner and Wilson? A. Yes.

Q. Let me ask you generally if at the conversation which you had with Cheyne at any time there was any suggestion on his part, or a suggestion on the part of anybody, that if this chattel mortgage were given he could keep the other creditors off? A. None whatever. The subject was not mentioned. Mr. Cheyne was very anxious for the loan, unusually anxious for the loan; he was trying to create a good impression with me all the time.

20 Q. I see here that there is a bond of guarantee taken from the Sanford Co. and from two of the managers of that Co., Greene and Duffield, to Wilson. Under what circumstances was that taken? A. I said to Mr. Greene this amount is a large amount; I said, you know what goods he has there; I said of course the value of this security depends largely upon the amount of goods there; your warehouse manager, Mr. Sweet, has seen this stock frequently, and this loan is being repaid at the rate of \$100, a week, and stock of that kind can depreciate unless it is properly kept up; you tell me it is going to be kept up; I said I think it is only fair under the circumstances that I shall hold a guarantee, and I said I shall not deliver it unless I see fit. I said of course the idea of borrowing this money has originated with me, I am under no liability in the matter, but if there was any trouble I might feel a certain moral responsibility in

30 the matter.

Q. Then that was got, and did you ever communicate to Mr. Wilson the fact that it was given? A. I never did. I put it in my private box, and it has been there ever since until yesterday.

Q. Then, at all events, after the chattel mortgage was executed, did you have a cheque for the amount from Mr. Wilson? A. Yes, Mr. Scott got a cheque, I understand.

Q. To whom was it payable? A. To our firm.

Q. What was done with the money which you got from Wilson? A. I had an authority from Cheyne & Co.

Q. At least from Miss Cheyne? A. Miss Cheyne, to pay the amount of Sanford & Co.'s

40 claim to them, and the balance of the loan was to go in payment of the costs.

Q. So that substantially the loan was to pay off the claim of Sanford & Co? A. Yes.

Q. And did you pay it off? A. I did.

Q. Mr. Cheyne has also said that when the discussion was raised about the effect on other creditors that you then made the statement that they might kick; that in a similar case, mentioning the case of Gibbons v. Wilson to him, it was sustained, and that they might kick all

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they wanted? A. I never mentioned the case of Gibbons v. Wilson to him ; he mentioned that case to me.

Q. Did you ever mention any case to him? A. No, he mentioned the case of Gibbons v. Wilson to me about a week afterwards.

Q. What was it he said to you about a week afterwards? A. I had occasion to call him up on the telephone ; there was trouble with the insurance companies. We had to put it into two or three different companies, owing to the chattel mortgage being on the stock, the insurance companies objected to the risk. Certain companies won't take risks where there is a chattel mortgage, and I called him up in connection with some policies that had been cancelled, and he told me that Mr. Parkes had just been in a few minutes ago, and he said he had got him over to his office, and that he had taken down a volume of reports from the shelves and read him the case of Gibbons v. Wilson, and he asked me if I knew that case ; I said I had heard of it. The only discussion where a reference was made to that case was over the telephone at that time.

Q. That was sometime after the chattel mortgage had been executed? A. Yes.

Q. Now, subsequently, another chattel mortgage was got, of the 4th December, 1895? A. Yes.

Q. Apparently given in pursuance of the agreement as to security dated 1st November, You got that executed? A. Yes.

Q. Were the goods sold under the Wilson mortgage? A. They were sold under the Sanford mortgage.

Q. So far as you know, do you know whether Mr. Wilson knew anything about the sale at all until after it had taken place? A. Not so far as I know.

Q. Who were the solicitors acting in connection with that sale? A. We acted.

Q. On whose behalf? A. On behalf of the Sanford Manufacturing Company.

Q. And where were the goods sold? A. At Suckling & Co.'s, Toronto.

Q. They are trade auctioneers here? A. Yes.

Q. Do you recollect when they were sold? A. I think it was the 17th December.

Q. Sometime shortly before Christmas, anyway? A. A regularly advertised sale, advertised in all the Toronto papers, or several of them, at all events.

Q. And you got the proceeds of that sale--your firm? A. Yes, we did.

Q. What did you do with the proceeds? A. Mr. Blackley got certain notes in the matter, and Mr. Blackley discounted those notes and paid the proceeds over to us.

Q. Who is Mr. Blackley? A. Mr. Blackley is the assignee who conducted the sale. He took the stock under the chattel mortgage and conducted the sale.

Q. He took the stock at whose instance? A. At the instance of the Sanford Manufacturing Company.

Q. And arranged to have the sale, and the purchasers' notes he discounted and handed the amount over to you ; and what did you do with the amount which came to your hands? A. Paid them over to Mr. Wilson.

Q. How much of it? A. We paid the whole of it. There was something about twenty or thirty dollars short, I think, in the proceeds of the stock ; but Mr. Blackley, who was collecting the book debts for some time, told me he had about \$100, on account of the book debts.

Q. The amount that was paid over was only something about \$4,300 I see ; we are told that the proceeds of the sale were about \$4,900? A. There was a large rent claim of about \$600. The net amount which Blackley handed over was \$4,280.89, and we got a refund of insurance premiums of \$41 ; that made \$33.20, however ; there was about \$130, more than Mr.

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Blackley had undertaken to discharge the Wilson mortgage in pursuance of the undertaking, which is at the foot of a statement which you have.

Q. This shows it, does it? A. Yes.

Q. Then this stock apparently was sold to Patterson & Co. on the 21st December? A. And Wyld, Grasett & Darling endorsed the notes, and they would not endorse the notes unless Blackley gave the undertaking.

Q. They had found out that there was a prior chattel mortgage? A. Yes.

Q. So that according to this the total amount of the sale was \$4,897.34? A. Yes.

Q. And it was sold at sixty cents on the dollar, apparently? A. Yes, it was withdrawn at auction. It was only about 55 at auction, and it was afterwards sold at 60 cents on the dollar.

Q. The amount of the stock being \$8,202.52 at 60 cents brings it up to \$4,822.34, and then there is interest added for some reason? A. In paying over this \$4,822, Mr. Blackley deducted a certain amount to pay his fees and advertising.

Q. Blackley puts in here, "Received settlement as above from Patterson & Co., and I hereby undertake, on behalf of the Sanford Company, to get a discharge of all prior encumbrances against the Cheyne stock, and undertake to return the notes and cash this day received from Patterson & Co., less the amount of goods sold in the meantime, if the title is not perfect, and undertake to save Patterson & Co. harmless. (Signed) D. Blackley?" A. Yes, that was drafted by Mr. Kerr, a solicitor here, I believe.

Q. Solicitor for whom? A. He was acting for the purchasers. Mr. Blackley retained about \$200 odd, so that the sale realized, apart from Mr. Blackley's fees, a little more than enough to pay off Wilson's mortgage.

Q. So that there was enough to pay off Wilson's mortgage? A. Yes.

Q. I see you have got the second mortgage made payable forthwith. Cheyne says that when he gave the mortgage you made some representation that while it was payable forthwith it was not going to be acted on. Why was it the mortgage was acted on? A. Mr. Sweet had been in Toronto; Mr. Sweet, of the firm of Sanford & Co., had been in Toronto—

Q. Was it in consequence of any information that was got afterwards? A. It was in consequence of the fact that Mr. Cheyne was withdrawing money from the business for other purposes.

Q. Then that money was paid over by you to Wilson in payment of the mortgage? A. It was.

MR. RITCHIE, Q.C.—I will put in the order to pay the Wilson mortgage in settlement of the Sanford Co.'s claim.

WITNESS—That is an order directed to my firm.

By MR. GIBBONS, Q.C.

Q. When was the first you heard about this? A. On Thursday.

Q. Where? A. I could not just recollect whether it was in my office or over the telephone; but at the time Mr. Greene came to my office one of those days, he was only in there about two minutes.

Q. When were you first consulted about this transaction, and who consulted you? A. Mr. Greene consulted me.

Q. Yes; where? A. It was either in his office or my office.

Q. I was asking you where it was? A. I cannot say. I have said on one occasion I went over on a telephone message.

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Q. Mr. Greene has told us that before Mr. Cheyne came down at all he consulted you about the matter, and that when Mr. Cheyne came down he telephoned to you to come over. Is that true? A. My recollection is that Mr. Cheyne was in the office when he first spoke to me in this business.

Q. How did you come to be in the office? A. I say my recollection is that Mr. Cheyne was in Sanford's office.

Q. How did you come to be in Mr. Sanford's office? A. Because I was over there in about two or three minutes; it is only about a block. The time he came to my office he was only there two or three minutes.

10 Q. Did he tell you the situation? Did he consult you? A. He told me that they were interested in this man.

Q. Where did he first consult you to get your advice to try and get this chattel mortgage? A. The real discussion of the matter took place over in his office.

Q. Where did he consult you about it? A. On Thursday.

Q. In your office or his? A. As I tell you I went over to his office.

Q. Did you discuss it in your office? A. We had no discussion in my office.

Q. You had no discussion at all in your office? A. He might have told me that Mr. Cheyne was in his office.

Q. Nothing more? A. No.

20 Q. He did not consult you before Mr. Cheyne came down? A. He might have mentioned it in two or three words; he might have said Mr. Cheyne, of Toronto, was up here, and he owes us \$4,700. My recollection of it is that he was over in his office at that time.

Q. Do you keep any memorandum of these interviews? A. Not of the hours; I do of the charges.

Q. Have you got your charges book with you? A. I have.

Q. Let me just see it. (Book produced by witness).

Q. What did he tell you when he did see you in order to consult you? You hadn't been his regular solicitors, I believe; you had done something for them, but their regular solicitors were Lazier's firm? A. Mr. Lazier had been their solicitor for twenty-five or thirty years, I 30 believe.

Q. They came to you in this special matter to consult you? A. I had looked after another large matter before, and I understood Mr.—

Q. What did they come to you for, to get counsel as to what was best to be done? A. I suppose it was.

Q. Did they tell you the circumstances, then, to start with? A. He simply told me that he owed them that amount of money. We did not go into details until we got over to his office.

Q. You went into the details when you went over to his office, did you? A. Yes.

Q. What details did you go into? A. He just told me what the amount of the claim was.

Q. And the amount of the stock, and then you stopped there? A. He told me about what 40 the amount of the stock was.

Q. He never told you anything about the liabilities—he was wrong about that, was he? You were present at his previous examination and you saw what occurred on Mr. Greene's examination in Hamilton, where he said that you asked what the liabilities were at that time and that he had given you a list of them in his office? A. I did not know it was put quite as strongly as that, but something to that effect.

Q. And you have discussed that with him since? A. I have.

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Q. And you have been arguing with him that that was not so? A. No, I have not been arguing with him. I pointed out to him that it was mentioned after—

Q. And you tried to convince him and yourself that when they were consulting you in this matter about securing the claim of \$4,775 that the position of Cheyne wasn't discussed at all, whether she was a woman worth a million or without capital, or with other liabilities or without any—none of that was discussed, was it? That is what you want us to think? A. That is a pretty long question. You start out by saying that I tried to convince myself and him; I object to it being put in that way. I drew his attention to the fact that it was not mentioned at all.

Q. You tell us that when you were going to give him advice about a claim of \$4,775 the position of the debtor was not discussed? A. The liability was not discussed.

Q. Whether it was a person of small or large or no capital, that was not discussed? A. Mr. Greene gave me the information in that way—

Q. That was not discussed? A. No.

Q. You, a commercial lawyer with a great practice, advised your clients without knowing anything about the premises, did you? A. I knew what stock he had.

Q. Do you take chattel mortgages for everybody as soon as being told what stock they have got? Do you suggest that? A. I am guided by the circumstances.

Q. Of course, that is the difference; you have got to know the circumstances, haven't you? A. Each case stands on its own bottom, you know,

20 Q. Then you have got to find out the circumstances of each case, haven't you? A. It depends upon the position my client is in the matter.

Q. The first thing, before you can give advice, is to find out the position of your client and the debtor, to consider what ought to be done? A. It depends upon the object to be accomplished. Sanford & Co. had a debt there of \$4,700; and they wanted to get their money.

Q. If there was a large surplus in the business it would not be a way to get the money, by chattel mortgage, would it? A. I thought that was the best way to get the money.

Q. You would not think that was the way to go to work to get a debt from a man with capital, would you, or with a surplus in the business? A. If he was willing to give a chattel mortgage.

30 Q. I want you to be candid with me. Do you pretend to tell me, if you do swear it and we will end it now; do you pretend to tell me that you would give advice to take a chattel mortgage from Miss Cheyne without inquiring at all what were the circumstances, what capital she had, what her liabilities were, or anything of what kind? Is that what you want us to believe? A. What I would look at in the case of a loan.

Q. Answer my question. A. I don't know what the question is; there are about four branches.

Q. Did you give your advice without making inquiries? A. If this man had sufficient assets to borrow \$4,700 on a chattel mortgage and could borrow money on a chattel mortgage, Sanford & Co. could get their money in that way; and that is all I conceived to be my duty in
40 the matter.

Q. What necessity was there for them getting the money in that way if the party were good? A. It was a large amount of money, and it seemed to me if he raised the money on the chattel mortgage and they got their money, that would be the best way of their getting it.

Q. Would you give that advice, or did you give that advice without making any inquiry as to the character of the party, that is to say their capital or liabilities? A. I gave Mr. Greene this advice, that I thought if Mr. Cheyne had sufficient assets there to justify a loan of that

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amount that that money could be borrowed in that way ; so that the only question to be considered in my mind of course was what amount of assets had he there, and what amount would he require on it, and was he willing to give a chattel mortgage.

Q. And you gave all this advice without making any inquiry as to the circumstances of Miss Cheyne, her capital or liabilities? A. I discussed with Mr. Cheyne the amount of business he had been doing and the prospect ; he had only been in business about six months, that the fall trade was slack, and that the business was going to improve.

Q. You gave this advice without making any inquiry about what Miss Cheyne's liabilities were or what her capital was? A. No, I said I would go in and discuss these matters with Mr. Cheyne, and I did go in and discuss that with Mr. Cheyne.

Q. Then you did discuss what her liabilities were with Mr. Cheyne? A. I did not. If I had asked Mr. Cheyne what her liabilities were, he would have told me that they were comparatively nothing ; that was the impression he gave me at the time.

Q. Did you discuss them with him? A. No, not at all, except about Calder.

Q. You did not discuss his liabilities with Mr. Cheyne? A. No.

Q. Or what this woman's capital was? A. No.

Q. Never asked Mr. Cheyne any of the ordinary particulars that an ordinary solicitor would ask his client about the security? A. I did ask him about the security ; I asked him about the assets.

Q. But you did not say anything about the liabilities? A. The impression I had that day was that the Sanford Co. were almost the entire liability.

Q. Did you ask any questions? A. I certainly asked a number of questions.

Q. Did you ask any questions about the liabilities? A. I did not ask him for a list of his liabilities.

Q. Did you ask any questions about the liabilities? A. No.

Q. Where did you get the impression that there were no other creditors? A. Mr. Cheyne was telling us he could pull through all right if he could only make a loan in that way, it would ease things up wonderfully, and that he had only been six months in business. That is the way I got the impression. The only liability he mentioned was about Calder's that that was not large, that he owed Calder less than \$200.

Q. Did you see a memorandum list, taken down at the time, lying on the desk? A. No, I did not.

Q. Mr. Greene's own writing? A. I never saw it, no.

Q. And so you gave advice to your client Mr. Greene in this transaction with no other particulars than you have told us, is that it? A. Yes.

Q. And you say that the debtor, Mr. Cheyne, was anxious to get the mortgage that day? A. He was very anxious to get the loan.

Q. Now is it a matter of fact, because both he and Mr. Greene swore that he would not consent to give it at all that day, and he went back to Toronto? A. No, he said he would rather get it in Toronto if he could get it.

Q. That is not what Mr. Greene or the debtor say ; they both say that he declined the first day to give it. Nobody said a word before about going back to Toronto? A. He said he thought his own solicitors, Messrs. McKeown & Fraser, could raise the money for him. That was the impression he created in my mind.

Q. Then he was not so eager to get it from you as you have told us a minute ago? A. He was very anxious to get the loan.

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Q. Not from you? A. The second day he came up he was anxious to get it from us.

Q. The first day? A. He was eager to get a loan, but would prefer to get it in Toronto. He said he thought he could arrange it at a less rate of interest in Toronto.

Q. That is the only reason he put it off the first time? A. Yes.

Q. That is the only reason it was put off; is that so? A. That is the only reason he gave for putting it off. I suppose his reason now was to consult Fraser & McKeown.

Q. You still have further information to give us? A. You ask me what was his reason, and I told you the reason he communicated.

Q. Where is your first entry, in connection with this matter, in your blotter; is this your blotter? A. Yes; 31st October.

Q. "To long attendance with Mr. Greene, and afterwards at your office and advising," something or other. What do you mean by that "To long consultation with your Mr. Greene, "and then afterwards at your office?" A. That word long, you will see was filled in there, interlined afterwards; that is intended to qualify the whole item. Before our charges are put in the individual accounts, our book-keeper comes in and goes over them with me at the end of the month.

Q. Is that your writing? A. Yes.

Q. Is that "long" your writing? A. Yes.

Q. You put it there? A. Yes.

20 Q. "To long interview with Mr. Greene, and afterwards a further interview at his office," that was made at the time? A. Yes, "long" was put in afterwards.

Q. What do you mean by afterwards? A. I suppose it was put in two or three days afterwards. That is my impression.

Q. You would remember it better two or three days afterwards than you would two or three months afterwards? A. You can see that the figures are changed there also.

Q. You increased the charge, did you? A. I increased the charge.

Q. It began to grow more valuable as time went on. You would remember, I suppose, two or three days after this entry? A. As I say, our book-keeper is in the habit of going over these entries at the end of each month with me, and some charges I reduce and some I increase.
30 Very frequently I do not fill in the amount at all until the end of the month.

Q. I see you charge for advice again on the first? A. Yes.

Q. Attendance on Mr. Greene and with Cheyne and advising. Then you charge again, I see, on the same date, Sanford for drawing agreement to give further security? A. That is November 1st, yes.

Q. Did you search executions? A. Yes.

Q. On whose behalf? Not Mr. Wilson's, because I see your firm was not acting for Mr. Wilson. On whose behalf did you search the executions? A. I was interested in knowing that there were no executions.

Q. On whose behalf did you search executions? A. I suppose on my own behalf as much
40 as anybody's.

Q. And chattel mortgages you searched? A. I searched chattel mortgages.

Q. On whose behalf did you do that? A. I made the charges to Miss Cheyne there.

Q. On whose behalf did you do it—Miss Cheyne did not want you to search executions for her, she had no interest, she knew that there were no executions? A. I did it on my own behalf, and on behalf of Sanford & Co., in this way—Sanford & Co. were supplying him with goods, etc., and they wanted to know whether everything was correct, etc., I suppose. They had

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taken an agreement to give a mortgage and that searching was the next day. I telephoned to our agents.

Q. You now think that was for Sanfords? A. That was to find out the true position.

Q. Sanfords were the real parties interested in the whole deal? Wilson was the mere machine you used? The Sanford people guaranteed this mortgage? A. I haven't said that.

Q. Did they guarantee it? A. Sanford & Co. executed that guarantee.

Q. At whose instance? A. At my suggestion; at my request.

Q. Who drafted it? A. I think Mr. Hobson drafted it.

Q. Did you read it before it was signed? A. I glanced over it; I suppose I read it.

10 Q. You witnessed it, I see. A. I witnessed it.

Q. Did you read it? A. I glanced over it. I presume I read it in that way.

Q. *Reads guarantee*, Is that true? A. It is not true in this way, that such an agreement never had been made.

Q. Then it was false; it was not true? A. I don't want to put it in that way.

Q. It was either true or untrue? A. That is the usual way of drawing a guarantee. I presume that form was taken out of Bryant's conveyancer. I got down to the office very late that night, and asked Mr. Hobson to draw the agreement.

Q. Then there was no agreement with anybody to give a guarantee? A. There was no agreement with anybody to give a guarantee.

20 Q. Who inspired it then? A. I did.

Q. Who agreed with you to give it? A. Mr. Greene was quite willing. Mr. Greene said he had no doubt the stock was there, and that the security was good.

Q. On whose side were you acting? A. For Sanfords.

Q. Was it for Sanfords that you were taking this bond from themselves? A. No, it was just as I explained.

Q. Who was it to protect? A. That is a hard job to say who it was to protect. I think I explained before how that was given. I said the amount was large; that the value of the security depends upon the amount of goods there; that stock and that, of course, could depreciate; and then, as this idea has originated with me, although I am under no liability in the
30 matter, still I thought it was fair to put it into my hands to be delivered, if I saw fit, but not to be delivered unless I saw fit.

Q. That is to say, if there was any necessity for it, it was to be protection for Wilson; if there was no necessity, it was not to be a protection? A. It was left to my discretion.

Q. And supposing there had been a shortage and had been a loss, would you use the bond? A. I would have considered the matter at that time. I cannot say what I would have done.

Q. That was left entirely to you? A. I was at liberty to deliver that guarantee if I saw fit.

Q. Everything was left pretty well to you by Mr. Wilson? A. Not by Mr. Wilson.

Q. Oh, no, Mr. Wilson, you casually know him, I suppose? A. I know Mr. Wilson.

Q. You did know him at any rate? A. Yes.

40 Q. And he had been a client for years of your firm and of the old firm of Walker Scott? A. We have made a few collections for him, etc.

Q. He has told us here, I see, in the examination that they had been doing his business for years, that they were general solicitors for him, lending his money and doing all classes of business. Have you got your books here? A. No.

Q. Have you an account with him in your books? A. I suppose there is an account there. I suppose we have lent money.

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Q. Your clients are so numerous that this little one you hardly knew as a client ; is that what you say? A. As far as my recollection goes, we have not had a law bill against him for three or four years, but it may have been. Mr. Wilson—I look after one part of the business and I never look after any matters like Mr. Wilson is interested in, of loans.

Q. Were you a witness in the Gibbons v. Wilson case? A. No, I was not.

Q. Mr. Scott was a witness there? A. No, Mr. Scott was not a witness there.

Q. You say that Mr. Wilson knew nothing about the sale of this stock in Toronto? A. Nothing that I know of about it.

Q. Not a word said to him about it? A. Not that I know of.

10 Q. You sent Mr. Blackley over? A. No.

Q. Who sent him over? A. Sent him over where?

Q. To Toronto to take possession. Who sent Mr. Blackley over to take possession? A. I think I did.

Q. Didn't consult Mr. Wilson at all about that? A. No.

Q. He really was not interested? A. I saw Mr. Blackley and handed him a warrant, but I had nothing to do after that until the money came in.

Q. What else was there to do with it after that? A. Attending the sale in Toronto. Mr. Scott attended the sale in Toronto.

Q. That is your partner? A. Yes; I am out of town three or four days in the week and
20 never attend to those matters at all.

Q. However, your firm attended to the whole matter and did not consult Mr. Wilson at all? A. Not that I know of.

Q. You had had an order in the first place in favor of Sanford under the chattel mortgage to pay over the money? A. Yes.

Q. And that you kept yourselves? A. Yes.

Q. That was to you? A. Yes.

Q. And you went on and sold out all these goods under the chattel mortgage without saying a word to Wilson? A. Yes.

Q. And you held this bond from Sanfords in your box at the time? A. Yes, in my
30 private box.

Q. Does that alter its character, getting in your private box? A. I held it personally; my firm did not hold it.

Q. Did Mr. Scott know you held it? A. He did not.

Q. You came down with Mr. Cheyne to Toronto? A. Yes.

Q. And did not discuss at all business on the way, you say? A. Very little discussion.

Q. No discussion at all at the house either? A. Very little.

Q. Any? A. There was no discussion at the house.

Q. Or on the way down? A. Very little.

Q. Any? A. No; we might have talked about business a few minutes. There were three
40 of us together. I do not know who the stranger was, and we three were together.

Q. Did he talk about business at all? A. There is nothing of business passed in my recollection at all.

Q. You do not remember discussing it at all? A. No, I suppose there would probably be something said about it.

Q. When did you first find out that there were other unfortunate creditors being left in this

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manner—you were surprised of course—when did you hear that? A. I heard that there was a meeting of creditors called in Toronto.

Q. You were surprised? A. Yes, completely surprised.

Q. You always are surprised about these things, and you were as duly surprised as usual when you found that there was a meeting of creditors? A. I don't think you should put it that way.

Q. Oh, yes, I think I should. When did you hear about it? A. I suppose a week or ten days afterwards.

Q. Then in the meantime you took another journey; you came down about the first of December, two or three weeks after the meeting of creditors, and got another chattel mortgage?

A. That is the 4th December.

Q. That is two or three weeks after the meeting of the unfortunate creditors? A. That was two or three weeks.

Q. And you got another chattel mortgage? A. Yes.

Q. That was after the order made in the injunction action? A. Yes.

Q. And you advised, I believe, that that new deal helped you rather, that you could sell under a new mortgage; you were not disobeying the injunction of the court, and you were making your title still stronger? A. I had no such idea in view at the time.

Q. That was an after thought, I believe; you have expressed that I believe very strongly, 20 that you thought you got over the effect of this consent order by selling under the Sanford order? A. No, I never put it in that way.

Q. How did you make the chattel mortgage? A. If you say I discussed it formally you are entirely mistaken about it.

Q. All right, I am very glad. How did you make the mortgage payable? A. It was payable forthwith, as the debt was payable that way.

Q. Executed on the 4th December, and when did you take possession under it? A. I think it would be about—I couldn't tell that. If you will tell me the date of the sale.

Q. About the 7th? A. About a week before the sale. I thought Mr. Blackley had these papers and I asked him, but he hadn't got them.

30 Q. Two or three days after you got the chattel mortgage? A. About a week after. The day the mortgage was taken he promised to make regular remittances. Mr. Sweet had seen him in Toronto and he also promised to make prompt remittances, and he did not do that; and they heard he was taking \$300 to pay off an outside matter—outside of the business altogether.

Q. I am going to give you a chance to answer once more, do you tell us that when Sanford & Co. consulted you about a customer in Toronto, a Miss Cheyne, that owed them \$4,775, that without making any inquiry as to her position and capital, you advised them to take a chattel mortgage? A. I do not put it in that way. I ascertained the amount of the stock and the amount of their debt, and as I say, the impression was created on me at that meeting that they were almost the whole body of the creditors themselves.

40 Q. And you still tell me—? A. From things that were said.

Q. And you still tell me that you did not give advice as to what action they should take as regards their customer, without finding out her position? A. I did not strike any balance.

BY MR. RITCHIE, Q.C.—Q. When I understand that your charges were made in the book—without going into details there—against the Sanford Company as to some of the questions and as to the others against Miss Cheyne? A. Yes.

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J. J. GREENE, recalled.

BY MR. RITCHIE, Q.C.—Q. You heard a statement made by Mr. Cheyne, that at one of the interviews that took place in the Sanford Co.'s office prior to the giving of the chattel mortgage that some case of Gibbons v. Wilson was referred to? A. I did.

Q. Is there any truth in that? A. No, sir, there is none.

Q. He also made the statement that when the matter was being discussed Mr. Lees had said something to the effect that the other creditors might kick all they liked, but that they could do nothing, and that he, Cheyne, could compromise with them when he got ready. Was anything of that kind said at any of the interviews? A. Nothing.

10 Q. Nothing to that effect? A. Nothing to that effect.

Q. Now, you also heard him state that in the little list of liabilities which you had taken down that these did not contain all his liabilities, because he told of some others which were not taken down. What do you say as to that? A. He gave me that as a complete list of his liabilities. I think you will find, if you examine that slip, that there is one added on that he thought himself of afterwards.

HIS LORDSHIP—Q. How much is contained there? It foots up to how much? A. \$4,000.

MR. RITCHIE, Q.C.—It is first \$3,700, and then there is added on \$300 more, making a total of \$4,000.

Q. Is it correct that he told you his liabilities exceeded that? A. It is not (referring to 20 Exhibit 8).

Q. He also says that he stated that you agreed to give him originally a credit of two years to the extent of from \$3,500 to \$4,000? A. It is false. We do not do business in that way.

Q. Is it false both as to the terms and as to the amount? A. It is.

Q. On what terms do you say you sold to him originally? A. He was to make us weekly payments and give us weekly statements.

Q. To render you weekly statements? A. Yes, he was.

Q. Did he ever make you weekly payments during the seven months he was in that business? A. He did not.

Q. Did he ever render you weekly statements? A. I think he did.

30 Q. How many? A. I think he may have rendered two or four or five.

Q. So that there was no specific period of payment; he was to pay by weekly payments? A. That was it.

Q. Did you understand whether he was to buy any other place outside of your firm? Anything said about that? A. There was no understanding he would not do it. As a matter of fact I was told that he did.

Q. And bought for cash afterwards? A. And bought for cash.

Q. You have told us in chief that you understood up to a certain time that your firm represented at least nine-tenths of the liability. When did you become aware that he had bought more largely from outsiders? A. When he furnished me with the information contained on that 40 slip of paper (Exhibit 8).

Q. That was in Hamilton? A. In Hamilton.

Q. Mr. Cheyne also said, though he does not put in so many words, that there was an understanding when you were there, or when you and Lees were there; an understanding something that he was not to pay other creditors, that when he gave the chattel mortgage he was not to pay other creditors. Is that true? Was there any such understanding? A. There was no understanding to that effect.

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Q. Was there any agreement to that effect? A. There was not; he was to be at liberty to pay other creditors.

Q. What statement did he make as to paying others, if any? A. About his ability to do it?

Q. Yes? A. He thought with the arrangement that was made with that chattel mortgage that he would be able to pay it.

Q. That was about \$100, a week? A. Yes.

Q. He was paying \$100, a week; did he tell you or did you get the information from him as to how much he would usually take in a week in the business he was carrying on?

10 MR. GIBBONS, Q.C.—I do not know that my learned friend should go into all this as a sort of re-examination. He went into all this in a different way originally, and now they have had the lunch hour, and he should not go into this. There is nothing about this that he should have gone over again.

MR. RITCHIE, Q.C.—Q. Did you understand from him how much he was supposed to take in a week? A. He made the statement to me that in good—when trade was good—he would take as high as four and five hundred dollars a week.

Q. Then I see you took a second mortgage, which was made payable forthwith. Cheyne tells us that when Mr. Lees got it he intimated to him that while it was made payable forthwith, you were not going to proceed at once. Why did you eventually proceed? A. The under-
20 standing was that he would make us weekly payments; that we would furnish him as he paid with new goods. We were also informed that he paid \$300, or thereabouts on a chattel mortgage on his wife's furniture.

MR. RITCHIE, Q.C.—That is the defence, my Lord.

BY MR. GIBBONS, Q.C.—And what did you tell me this morning was the amount of the liabilities that he gave you outside of Sanford's? A. I told you this morning—

Q. Did you tell me it was \$4,700 or \$4,800, this morning? A. No, I did not.

MR. RITCHIE, Q.C.—It was Cheyne made that statement.

MR. GIBBONS, Q.C.—No, this man made that statement.

WITNESS—No, I beg your pardon, I did not.

30 Q. Didn't you tell me in my examination of you that the assets were nominally \$9,000, and that the liabilities he made \$9,600? A. No, I did not.

Q. Did you hear anything about Burns & Lewis having a further claim of \$800? A. I did not.

Q. You did not hear anything about their having goods in there? A. About him having goods in there.

Q. Yes? A. I understood they sold Cheyne.

Q. You did not hear anything about their having \$800, of goods that were insured in their name? A. No.

Q. Never heard of that? A. No.

40 Q. Never heard of that until this minute? A. This is the first time.

MR. GIBBONS—My Lord, I want to put in the examination of the defendant Greene—I read to him nearly all the questions I want.

MR. RITCHIE, Q.C.—They must be taken down by the reporter. He cannot put them in as he was not cross-examined.

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HIS LORDSHIP—You can put in those that you examined him upon, but you cannot read them generally at large.

MR. GIBBONS—I think I read all of them. I think they were read at the time, and taken down by the reporter, but I think I should note them.

HIS LORDSHIP—It was another reporter when they were read.

MR. GIBBONS, Q.C.—I did not know the reporter had changed. I read to him, I think, these questions.

MR. RITCHE, Q.C.—I submit it is not fair to read them now. I took a note of them as they were read.

10 HIS LORDSHIP—If he did read them he can take them down now, or he can recall Greene.

MR. GIBBONS, Q.C.—I read all these questions to him one after the other, so that I think myself, in a sense, they are before the Court when put in that way. I refer to question 27.

MR. RITCHE, Q.C.—23 to 29.

MR. GIBBONS, Q.C.—All right; I referred also to the inquiry about the liabilities.

HIS LORDSHIP—Yes, you asked him as to a contradictory statement of his about that, at questions 69 to 72.

MR. GIBBONS, Q.C.—*Question 69*, "He knew that you were asking Cheyne to make an assignment. You asked him in his presence? Answer, Yes, he knew. I do not know whether he was asked in his presence. I think he knew I had asked him for it."

20 *Question 70*, "Did he ask any questions as to what, if any, capital Cheyne had? Answer, He asked particulars as to his assets and liabilities."

Question 71, "What statement did he make as to his liabilities? Answer, Cheyne gave him the statement himself."

Question 72, "What amount of liabilities did he give him? Answer, I think something like eight thousand dollars. It might have been nine, perhaps eight."

Question 81. I put this to him. Suggest who? He said a client of his.

MR. RITCHE, Q.C.—*Question 80*, "Had the solicitor told you he had found him?"

MR. GIBBONS, Q.C.—Yes. "He said he thought he could get a loan." *Question 81*, "Suggest whom? Answer, He said a client of his."

30 Argument by Mr. Gibbons, Q.C.

HIS LORDSHIP—This is a case of difficulty, a case of somewhat conflicting evidence. The difficulty of interfering is that the duties of the Court are limited by special legislation, and I have to see that the case falls within the scope of the Statute. And I do not think I can act as might be done in a case in England, where there is a general Insolvency and Bankruptcy Law, upon a general proposition that the transaction offends against the spirit of the law. I have to deal with the case on narrower grounds, and while the effect of the case is most effectual to give a preference to Sanford & Co., and to protect Wilson in his advances, it is by no means a satisfactory state of the law that such should be the case; and my intention is, while I feel compelled to uphold the transaction, to let Wilson and the others pay their own costs. It perhaps is a
40 strict, sharp business matter, but not one which the Court will encourage by giving costs to those who engage in it.

Now, what lies at the root of the whole matter seems to be this, that Cheyne was approached first of all to make an assignment for the general benefit of creditors, and his action at that time is a very strong circumstance to show the position that he took. I told them, he says, that there was no necessity for an assignment, as I thought I could carry along all right. If I had felt it

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was useless to carry on I would have assigned. I could carry on with their support. They said if I would pay up they would carry me along, and they suggested how I could pay up. This was the alternative if I would not make the assignment. Then he says, if Greene had supported me, as promised, I could have met the liabilities. Now, at that point, the intention in Cheyne's mind was not to wind up by an assignment but to carry on the business, and if the support was given and the money advanced and the promises made—which he says were made—carried out, then he could have carried on, not set his creditor at defiance, but have made the payments which would have reached not only the chattel mortgage but the other creditors. He says that this was based on an understanding. This understanding is denied by Mr. Greene, but he says
 10 that there was an understanding that after he paid a few hundred dollars the mortgage would be allowed to stand. I said, I could not continue paying \$100, a week until the mortgage was exhausted. I said, if, when I paid \$700, or so, the rest would be allowed to stand over I could carry on. Greene said he thought that could be arranged after I had made these payments. Then he said, when the whole amount was exacted, he knew he could not carry on.

Now, we cannot for all purposes consider Sanford and Wilson as the same. There was no doubt a complication in the way in which the matter was worked out. This firm of solicitors, Scott, Lees & Hobson, split themselves up so that Scott acts for Wilson and Lees acts for Sanford; but all that transpired with reference to Greene, for instance, I cannot impute to Wilson, the knowledge that there was this understanding, not in writing, which Mr. Cheyne was relying on,
 20 that he should be supported in a particular way. If that could be made out, and if I could find that there was this promise to carry on in a particular way, which was violated afterwards, then the whole thing would look very much like a scheme at the outset to entrap Cheyne into it. One mischief which ought to be remedied in a case of this kind is that the Legislature should prohibit all secret transactions about what manner of support should be given, and how a person should be enabled to carry on the business, by enacting that all bargains of that kind should be put in writing, so that in black and white it should appear what the nature of the terms was. Here I find no enforceable agreement as to what the future supply would be as between Sanford and Greene and Cheyne, it is all left to the contradictory recollection of these people. But it is evident that Cheyne went into this thing, not as argued by Mr. Gibbons, with a view to get on
 30 under the cover and protection of this large mortgage, but with the idea that if the support were given to him as promised, as he understood it was promised, at all events, he would be able to carry on his business and the need of making an assignment or of winding up would be obviated. Now, when Wilson is brought in it is no doubt a very suggestive thing that this was probably carried out, not on the ordinary lines of a business transaction, but apparently on the lines of this decision in *Gibbons v. Wilson*, that this sort of dealing was not within the statutory prohibition; and it may be that the eyes were closed, or that enquiries were not made or not communicated, at all events, to Wilson, which would give him the information which might have been fatal to the transaction. He does not make enquiries, but turns the whole thing over to his solicitor, Scott. Then the money is advanced—no doubt the money is advanced by him
 40 and is put into this thing, and is paid over afterwards to the Sanford Company, which pays him in full. I do not think I need go into the subsequent dealings which took place, where the Sanfords exacted a mortgage payable forthwith, under which they sold and turned the money over to Wilson, because the point attacked here is the mortgage for \$4,700, as an invalid transaction. I do not think it is upholdable on the evidence that the parties entered into it with a view to defeat and delay the other creditors. The statement made by Mr. Cheyne that there was a case covering the matter, that he could put the other creditors at defiance and go on in spite of them

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and use this as a means to gain a composition and go on in his own way and his own time, is denied emphatically both by Mr. Lees and Mr. Greene, so that I cannot find that that fact is proved as pre-existing in the minds of those who were dealing.

Then the money was unquestionably advanced, and the point is whether Mr. Wilson knew that that was money to be applied in any fraudulent way. The circumstances fall short. It does not seem to me an ordinary business transaction, but it seems to have been prosecuted on the lines that it was a legal thing to do to lend the money in this way, if there was sufficient stock to answer it, and look no more and no further than that. That seems to be an unsatisfactory state of the law, and it is the law; and while I have to dismiss the action, I dismiss it
10 without costs.

MR. RITCHIE, Q.C.—As far as costs, as far as the defendant Wilson are concerned, it is different.

HIS LORDSHIP—There is a security taken from Sanford to Wilson, which is a very suspicious element. I give credit to what Mr. Lees says, that it was an escrow, still there it was; and if he has put himself in the hands of solicitors who do that, I cannot help it, and I dismiss it without costs.

MR. RITCHIE, Q.C.—It mattered not if a solicitor communicated all these matters to the party, still it would be upheld.

HIS LORDSHIP—Suppose this indemnity had been given.

20 MR. RITCHIE, Q.C.—In the same case, *Gibbons v. Wilson*, indemnity was given in that case. And the case which came before His Lordship Mr. Justice Meredith, very recently—

HIS LORDSHIP—I will not change on account of that. I think it is a case eminently requiring ventilation.

MR. RITCHIE, Q.C.—I think your Lordship used a word, that it was not upholdable, I think your Lordship meant that it could not be invalidated on that ground.

HIS LORDSHIP—Yes.

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EXHIBITS.

EXHIBIT No. 1.

Guaranty.

THIS INDENTURE, made in duplicate this first day of November, in the year of our Lord one thousand eight hundred and ninety-five

Between The W. E. Sanford Manufacturing Company (limited), of the first part ; Joseph Greene and William S. Duffield, both of the City of Hamilton, in the County of Wentworth, of the second part ; and James D. Wilson, of the said City of Hamilton, Merchant, of the third part.

WHEREAS one Eliza Barnet Cheyne, of the City of Toronto, in the County of York, carrying on business as a retail dealer in ready-made clothing, has applied to the party of the third part for a loan of \$4,775, which she promises to pay with interest at the rate of 8% per annum in instalments of \$100 per month, the terms of which are to be set out in a chattel mortgage to be made by the said Eliza Barnet Cheyne to the party of the third part.

AND WHEREAS the amount of the said loan is to be paid over to the parties of the first part, creditors of the said Eliza Barnet Cheyne, and the parties hereto of the first and second parts, respectively, have agreed with the party of the third part that they will guarantee to the party of the third part the repayment of the said moneys with interest at the times to be mentioned in the said chattel mortgage.

NOW THIS INDENTURE WITNESSETH that the parties of the first and second parts, respectively, in consideration of the premises and of the sum of one dollar (\$1) to them in hand paid by the party of the third part, hereby guarantee to the party of the third part the due payment by Eliza Barnet Cheyne of the instalments of principal and interest secured by the said chattel mortgage, as and when the same shall become due ; and the parties of the first and second parts, respectively, hereby covenant with the party of the third part, that the said Eliza Barnet Cheyne will do, perform, and keep, all the covenants, provisions and conditions contained in the said chattel mortgage.

IN WITNESS WHEREOF the parties hereto of the first part have hereunto affixed their corporate seal by the hand of their Secretary-Treas. and the parties hereto of the second part have hereunto set their hands and seals the day and year first above written.

<p>30 Signed, sealed and delivered in the presence of</p>	}	<p>W. E. SANFORD MANUFACTURING Co. (limited) Per J. GREENE, Sec.-Treas. JOSEPH GREENE. W. S. DUFFIELD.</p>	<p>(Seal.) (Seal.) (Seal.)</p>
<p>WILLIAM LEES.</p>			

EXHIBIT No. 2.

Agreement.

Toronto, November 1st, 1895.

To The W. E. Sanford Mfg. Co. (limited), Hamilton.

For valuable consideration, the receipt whereof is hereby acknowledged, I hereby agree, in case at any time I make default in the payment of my present or future indebtedness, or in case

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at any time you demand the same, that I will give you a good and sufficient chattel mortgage upon all my present and future stock in trade, and other goods and chattels, including the stock in trade and other goods and chattels connected with the present business carried on by me under the name of Cheyne & Co., or any future business carried on by me. And I will also assign, transfer and set over to you all my present and future book debts, claims and choses in action, and my present and future books and papers, as collateral security for the payment of my present and future indebtedness to you, including any sum or sums which you may see fit to advance for me, or on my behalf, or at my request, at any time.

Witness my hand and seal.

10 Witness :

WILLIAM LEES. }

ELIZA B. CHEYNE. (Seal.)

EXHIBIT No. 3.

Extracts from Chattel Mortgage.

This Indenture made the first day of November, 1895.

Between Eliza Barnet Cheyne, of the City of Toronto, in the County of York, spinster, hereinafter called the mortgagor, of the first part; and James D. Wilson, of the City of Hamilton, in the County of Wentworth, merchant, hereinafter called the mortgagee, of the second part.

Consideration \$4,775.

On goods referred to in schedule "A," as follows :

All the stock in trade and other goods and chattels of the within named mortgagor, including the stock in trade and other goods and chattels of the said mortgagor in connection with the business carried on by her under the name of Cheyne & Co., on the within mentioned premises, and comprising amongst other goods, ready-made clothing and clothing in process of manufacture; and also tweeds, cloths and tailors' trimmings, supplies and saddries and gents' furnishings; also the shop and store furniture, fittings, fixtures, machines, tools and utensils. Also all other goods and chattels now or hereafter situate on the within named premises, whether of a description similar to or different from the above.

Provided the mortgagor shall pay unto the mortgagee the said sum of \$4,775, interest 8% per annum, on the days following. The said principal sum to be repayable at the rate of \$100 per week from the 4th of November, 1895; the first payment to be made 11th November, 1895, etc., etc.

EXHIBIT No. 4.

Extracts from Chattel Mortgage.

This Indenture made the fourth day of December, 1895.

Between Eliza Barnet Cheyne, of the City of Toronto, in the County of York, the mortgagor, of the first part; The W. E. Sanford Manufacturing Company (limited), the mortgagee, of the second part.

Consideration \$916.33.

On goods referred to in Schedule "A," as follows :

40 All the stock in trade of the within named mortgagor, consisting among other goods of ready-made clothing, clothing in process of manufacture, gents' furnishings, cloths, tweeds,

No. 4
IN THE HIGH COURT OF JUSTICE.

Burns vs. Cheyne

This exhibit is produced by Piffon

Reference

this 13 day of May 1899

at the Court of Piffon

R. C. O. A. J.

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tailors' trimmings and tailors' sundries and supplies, sewing machines, stoves and other implements, and tailors' utensils, tools and appliances, also the shop and store furniture, fixtures, fittings and utensils, including safe and show cases.

Also all other goods and chattels of every kind, and whether of a description similar to or different from those above mentioned, now or hereafter situate on the within premises.

Repayable as follows :

The said principal sum to be payable forthwith, together with interest at 8 per cent. per annum, as well after as before maturity, etc., etc.

EXHIBIT No. 5.

10 Order of 3rd December, 1895.

This Exhibit is printed herein at pages 58 and 59.

EXHIBIT No. 6.

Statement.

Toronto, Decr. 21st, 1895.

Messrs. Patterson & Co'y to D. Blackley, Agent.

	To amt. of Stock re Cheyne & Co.,	-	-	-	\$8,202 52
	By shortages on furnishings,	-	-	\$71 65	
	Woolens,	-	-	57 63	
	Clothing,	-	-	16 00	
20	Silk,	-	-	20 00	
				<u> </u>	\$165 28
					<u> </u>
					\$8,037 24
	At 60 cts. on the \$	-	-	-	4,822 34
	Interest at 7%	-	-	-	75 00
					<u> </u>
					\$4,897 34
	Credit				
	Decr. 21, by cash,	-	-	-	\$1,607 44
30	" note at 2 mos.,	-	-	-	1,084 13
	" " 4 "	-	-	-	1,096 62
	" " 6 "	-	-	-	1,109 14
				<u> </u>	\$4,897 34

Received settlement as above from Patterson & Co., and I hereby undertake, on behalf of The W. E. Sanford Co. (limited), to get a discharge of all prior encumbrances against the Cheyne stock, and undertake to return the notes and cash this day received from Patterson & Co., less amount of goods sold in the meantime, if title is not perfect, and undertake to save Patterson & Co. harmless against any liability.

(Signed) D. BLACKLEY,

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Agent The W. E. Sanford Co. (limited).

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EXHIBIT No. 7.

Order for Payment.

Toronto, Nov. 1st, 1895.

To Messrs. Scott, Lees & Hebson, Hamilton.

Please pay to The W. E. Sanford Mfg. Co. (limited), the amount of their claim against me, viz.: four thousand seven hundred and thirty and $\frac{9}{100}$ dollars (\$4,730.69) out of the proceeds of the chattel mortgage given by me to J. D. Wilson.

Witness :

(Signed) ELIZA B. CHEYNE.

WILLIAM LEES.

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EXHIBIT No. 8.

Memo. of Cheyne's liabilities referred to in evidence at pages 58 and 59.

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JUDGMENT AS ENTERED.

In the High Court of Justice.

(Seal.)

BETWEEN

BURNS & LEWIS, on behalf of themselves and all other creditors of the defendant Cheyne,

Plaintiffs.

AND

ELIZA BARNET CHEYNE, JAMES. D. WILSON,
AND THE W. E. SANFORD MANUFACTURING
COMPANY (Limited).

Defendants.

10

Law Stamps
\$1.70.

SATURDAY, JULY 25TH, 1896.

This action having come on for trial at Osgoode Hall, in the City of Toronto, on the 16th and 17th days of April, 1896, before the Honorable the Chancellor; upon hearing the evidence, and what was alleged by counsel for all parties, THE COURT WAS PLEASED TO DIRECT that the said action be dismissed out of this Honorable Court without costs.

20 And this Court doth order and adjudge the same accordingly.

Judgment entered this 25th day of July, 1896.

JNO. MACBETH,
Deputy Clerk.

J. B. folio 82, No. 47.

NOTICE OF MOTION.

Take Notice that the Court of Appeal will be moved on behalf of the plaintiffs, on Tuesday, the first day of September, 1896, at 10 o'clock in the forenoon, or as soon thereafter as Counsel can be heard, by way of appeal from the judgment delivered herein by the Honorable the Chancellor, on the 17th day of April, 1896, dismissing the action without costs, and for an order or judgment directing judgment to be entered herein for the plaintiffs with costs upon the
30 grounds:

1. That the said judgment is contrary to law and evidence and the weight of evidence.

and all

plaintiffs.

ELSON,
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defendants.

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Clerk.

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Counsel
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office.

2. The evidence shows that the intention of the defendant Cheyne, with the knowledge of the other defendants, was to protect the stock from seizure by the other creditors, so that she could carry on her business without paying her debts.

3. The defendants the Sanford Company procured the defendant Wilson to make the formal advance, but they stood behind him and indemnified him.

4. The advance was in reality a preference by the debtor to the Sanford Company, and should be treated as such.

And upon other grounds.

And Take Notice that in support of such motion will be read the pleadings and proceedings herein, the evidence at the trial and the exhibits referred to, the judgment of the Honorable the Chancellor, and such other matter as Counsel may be advised.

Dated May 15th, 1896.

GIBBONS, MULKERN & HARPER,
Solicitors for Plaintiffs.

To Messrs. SCOTT, LEES & HOBSON,
Solicitors for Defendants Sanford.

And to
T. B. MARTIN, ESQ.,
Solicitor for Defendant Wilson.

REASONS FOR APPEAL.

20

1. The evidence in this case shows that the intention of the debtor Cheyne, with the knowledge of the other defendants, was to protect the stock from seizure by the other creditors so that she could carry on her business without paying her debts. This was the inducement held out by the Sanford Company and the solicitor for the mortgagee Wilson; and it is a case where the intent to defeat, delay and hinder, was the real motive on the part of the debtor, with the knowledge of the mortgagee. Cheyne had no interest in giving a preference to the Sanford Company, and had no desire to do so. What she desired was to benefit herself, which she would do by putting matters in such a shape that the other creditors could not interfere with her business. This was the scheme entered into and suggested to her by the solicitor for the mortgagee.

Cottwells v. Mulholland, 3 E. & A., 194.

Merchants Bank v. Clark, 18 Grant, 594.

Boyd v. Glass, 8 Appeal 632.

2. The Sanford Company procured Wilson to make the formal advance, but they stood behind him and indemnified him.

3. It was in reality a preference by the debtor to the Sanford Company, and should be treated as such, and relief given as if it had been a chattel mortgage from the defendant Cheyne to the Sanford Company. See particularly the remarks of Chief Justice Strong, *Molsons Bank v. Halter*, 18 Supreme Court, page 88.

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GEO. C. GIBBONS,
Counsel for Appellants.

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REASONS AGAINST APPEAL

OF DEFENDANT SANFORD CO.

The respondents The W. E. Sanford Manufacturing Company (limited) submit that the judgment of the Honorable the Chancellor, directing judgment to be entered for the defendants, is right and should be sustained and this appeal dismissed for the following among other reasons:

1. The findings of the learned Chancellor are on all points in favor of the respondents and against the appellants, and are right and should not be disturbed.
2. The security taken by the respondent James D. Wilson was made by way of security for a present actual bona fide advance of money, and is therefore within the protection of the third section of the Act respecting Assignments and Preferences by Insolvent Persons, and said respondent was without knowledge of any fraudulent intention (if any such existed) on the part of the mortgagor.
3. The money so advanced by the said James D. Wilson to the said Eliza Barnet Cheyne was paid by the latter to these respondents, and such payment cannot be disturbed.
4. These respondents further submit that they took a subsequent security on the same subject matter, and sold and realized thereunder and paid the amount secured by the chattel mortgage held by their co-respondent James D. Wilson, and such payment can under no circumstances be attacked.

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JOHN J. SCOTT,

Counsel for the respondents The
W. E. Sanford Manufacturing
Company (limited).

REASONS AGAINST APPEAL

OF DEFENDANT WILSON.

The respondent James D. Wilson submits that the judgment of the Honorable the Chancellor directing judgment to be entered for the defendants is right and should be sustained, and this Appeal dismissed for the following among other reasons:

1. The findings of the learned Chancellor are on all points in favor of the respondents and against the appellants, and are right, and should not be disturbed.
2. The security taken by this respondent was made by way of security for a present actual bona fide advance of money, and is therefore within the protection of the third section of the Act respecting Assignments and Preferences by Insolvent Persons. This respondent had no knowledge of any fraudulent intention (if any such existed) on the part of the mortgagor, and, in fact, did not know until after this action was brought that his co-respondents The W. E. Sanford Manufacturing Company (limited) were in any way interested in the matter. The bond referred to was handed to the solicitor for his co-respondents The W. E. Sanford Manufacturing Company (limited) as an escrow, and was never delivered to this respondent, and until same was shown to him at the trial had no knowledge thereof.

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3. This respondent further submits that his co-respondents The W. E. Sanford Manufacturing Company (limited) took a subsequent security on the same subject matter, and sold and realized thereunder and paid the amount secured by the chattel mortgage held by this respondent, and such payment can under no circumstances be attacked.

T. B. MARTIN,
Counsel for the respondent James D. Wilson.

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JUDGMENT.

No written reasons for the judgment of the Court were given by the Judges; but the Judges stated that they considered themselves bound by *Gibbons vs. Wilson*, 17 A. R.

CERTIFICATE OF DISMISSAL.

TUESDAY, THE 11th DAY OF MAY, A.D. 1897.

BETWEEN

BURNS & LEWIS, on behalf of themselves and all other creditors of the defendant Cheyne,
Plaintiffs (*Appellants*),

AND

ELIZA BARNET CHEYNE, JAMES D. WILSON,
AND THE W. E. SANFORD MANUFACTURING
COMPANY (Limited),

Defendants (*Respondents*)

This is to certify that the appeal of the above named appellants from the Judgment of the Honorable Mr. Chancellor Boyd, pronounced on the 17th day of April, 1896, having come on to be argued before this Court, on the 24th day of November, 1896, whereupon and upon hearing Counsel as well for the appellants as for the respondent James D. Wilson and for the respondents The W. E. Sanford Manufacturing Company (limited), this Court was pleased to direct that the matter of the said appeal should stand over for judgment, and the same having come on this day for judgment IT WAS ORDERED AND ADJUDGED that the said appeal should be and the same was dismissed, with costs to be paid by the appellants to the respondent James D. Wilson and to the respondents The W. E. Sanford Manufacturing Company (limited), forthwith after taxation thereof.

(Sgd.) A. GRANT,
Registrar.

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