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the election, I should have allowed those paragraphs to be treated as particulars of the general allegations of undue influence affecting the election. There is, however, a total absence of any evidence showing any illegal practice or undue influence. The petition therefore fails, and is dismissed with costs against the petitioner.

Petition dismissed with costs.

Solicitors, for petitioner, *Roberts & Allport.*
Solicitors, for respondent, *Dobson, Mitchell & Allport.*

[HIGH COURT OF AUSTRALIA.]

DIXON . . . . . APPELLANT;

AND

TODD . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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BRISBANE, *May* 16, 18.

Griffith, C.J., Barton and O'Connor, JJ.

Bill of Sale—Bills of Sale Act (*Queensland*) 1891, *sec.* 4—*Insolvency Act* 1874, *secs.* 107-8-9.

By the law of Queensland a bill of sale has no effect as an assignment of chattels until registration.

By the *Insolvency Act* of 1874, sec. 105, an assignment made by a debtor in insolvent circumstances in favour of a creditor, not being for a reasonable and sufficient consideration given at the time, is voidable as against creditors if insolvency follows within six months.

A bill of sale was executed on 30th May for a then present advance of money, but was not registered until 18th August, at which date the maker was alleged to have been in insolvent circumstances. He was adjudicated insolvent within six months.

Held, that as against the trustee in the insolvency, the bill of sale was liable to be avoided as not having been made for a reasonable or sufficient consideration given at the time of execution.

Decisions of *Real*, J., and the Full Court, (1904) Qd. St. R. 128, reversed.

On 30th May, 1903, Wm. Lovell gave a bill of sale over certain chattels to J. W. Todd, the respondent, for an advance of £50 bearing interest. The sum of £50 was on that date paid by Todd to Lovell. Todd did not register the bill of sale till 18th August in the same year. On 2nd November Lovell was adjudicated insolvent, and Dixon, the appellant, was duly appointed the trustee of his estate. For the purpose of the proceedings below, and on appeal, it was assumed that Lovell was on 18th August in insolvent circumstances.

Application was made by Dixon to *Real*, J., for a declaration that the bill of sale was fraudulent and void against him as trustee, and that the property included in it was the property of the trustee, with consequential relief. On 10th December, *Real*, J., dismissed the application with costs.

The applicant then appealed to the Full Court, who by majority (*Cooper*, C.J., and *Power*, J.), dismissed the appeal with costs, holding that the time of giving the consideration, which was in fact contemporaneous with the actual execution, must be carried forward to the date of first registration, which is by law to be deemed the date of execution, and so deemed to have been contemporaneous with the date of the effective, and not the actual, execution (*Chubb*, J., dissenting).

The applicant now appealed to the High Court by special leave.

O'Sullivan, for the appellant. The effect of the decision appealed from is that a bill of sale given for a present advance may be held over indefinitely from registration, provided that it is registered prior to a subsequent adjudication, if only by a single day.

The matter turns on sec. 4 of the *Bills of Sale Act* 1891, and secs. 107-8-9 of the *Insolvency Act* 1874. Sec. 4 of the *Bills of Sale Act* provides that—"Every Bill of Sale executed after the commencement of this Act shall be registered in the proper registry in the manner prescribed by this Act, and shall truly set forth the consideration for which it is given, and no such bill shall have any effect as to any of the chattels comprised in it, whether as between the parties to it, or as against any other person unless the consideration is truly set forth therein, or until it has been so

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registered. *And for the purposes of any law avoiding assignments as against creditors, the date of the first registration shall be deemed to be the date of the execution of the bill of sale.*"

The trustee's contention is that the parties are in the same position as if the bill of sale had been executed on 18th August. Had it been actually so executed, it would not be disputed that it was null and void as having been given for a past consideration. From 30th May to 18th August, 1903, the mortgagee was in the position of an unsecured creditor; he then became a secured creditor, but in consideration of a past advance.

He thus comes within the provisions of sec. 109 of the *Insolvency Act*, which provides that: "Every conveyance, assignment, gift, delivery, or transfer of property, or charge thereon, made, executed, or given by any debtor unable to pay his debts, as they become due, from his own moneys, in favour of any creditor or any person in trust for any creditor, not being for a reasonable and sufficient consideration given at the time of making or giving the same, shall, if a petition for adjudication of insolvency be presented against such debtor within six months after the date of making, executing, or giving the same, and adjudication of insolvency be made thereon, be deemed a fraudulent preference, and shall be void as against the trustee of the insolvent under this Act," &c.

[On the interpretation of the words "reasonable and sufficient consideration given at time of making," he referred to *In re Donaldson*, 1 Q.L.J., 105, at p. 112; and *In re Backert*, (1901) Q.St.R., p. 288.] *Bonâ fides* in this case is admitted, but is immaterial.

The whole course of the statutory law as to bills of sale has been in the direction of increased stringency for the protection of creditors. Former Acts, the *Bills of Sale Act* (19 Vict., 102), and the *Mercantile Act* of 1867, were less stringent. The former Acts provided that to ensure validity a bill of sale must be registered within thirty days; the Act of 1891 makes it absolutely void until registered. Former Acts did not require the consideration to be truly stated, later Acts do.

Shand, for respondent. The appellant's case is based on a mis-

interpretation of the latter part of sec. 4 of *Bills of Sale Act* 1891: "For the purposes of any law avoiding assignments as against creditors," which he construes "for the purpose of altering any law applying to assignments against creditors." These words mean "for the purpose of extending any law," &c.; that is, it must first be shown that the assignment falls within the class of documents already struck at by some existing Act. In dealing with a bill of sale not touched by sec. 105 of the *Insolvency Act* this part of sec. 4 of the *Bills of Sale Act* can have no application. Sec. 4 cannot apply to a *bonâ fide* transaction, and, therefore, the dates of the giving of the consideration and of the execution are immaterial.

Sec. 108 of the *Insolvency Act* is stringent enough as it stands, without making it more stringent by applying sec. 4 of the *Bills of Sale Act* to the case of a *bonâ fide* transaction. The construction put on the section (sec. 4), bears hardly on an innocent mortgagee, and, if it does apply to such an one, it is strange that the legislature, with British and colonial precedents before it, should have gone out of its way to omit prescribing a period within which registration is compulsory.

[GRIFFITH, C.J.—The object was to do away with secret bills of sale by making them absolutely void.]

It is not denied that secs. 107-8-9 of the *Insolvency Act* are laws referred to by the *Bills of Sale Act*, sec. 4. Sec. 4 may have a different meaning for the purposes of different Acts; *In re Backert*, (1901) Q.St.R., 288, at p. 293. Sec. 4 should be read side by side with sec. 8 of 41 & 42 Vict. c. 41, the English Act, which is, in other respects, closely followed by the Queensland *Bills of Sale Act*.

[O'CONNOR, J.—The policy of the law is to afford the creditor information for his protection by a register of bills of sale.]

If sec. 108 applies to shift the date of the execution, it must be taken also to alter the date of the whole transaction, for it would be absurd that the Act should apply a fictional date to the execution, and, by that fiction, convert a present into a past consideration. For these reasons the appeal should not be allowed.

Cur. adv. vult.

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O'Sullivan, in reply.

The judgment of the Court was delivered by

GRIFFITH, C.J. This was a motion by the appellant, as trustee of the insolvent estate of William Lovell, for a declaration that a bill of sale dated 30th May, 1903, and registered on 18th August, 1903, may be declared to be fraudulent and void as against the trustee in the insolvency, and for consequential relief. The appellant's case is founded on sec. 108 of the *Insolvency Act* of 1874, which provides: [His Honor read the section.] In this case the adjudication was on 2nd November, 1903, so that the transaction was within the period of six months. Now, it will be observed that under that section certain artificial rules are laid down for determining whether a transaction is fraudulent or not. *Bonâ fides* and honest intention do not decide the matter. The only question is whether the conditions prescribed by the Statute exist.

The first condition is that the maker of the assignment is a debtor unable to pay his debts as they became due from his own moneys. The second is that the assignment is in favour of a creditor. The third condition is that it is not for a reasonable and sufficient consideration, or—which may be regarded as an alternative condition—that the consideration, although reasonable and sufficient, is not given at the time of making or giving the instrument. The effect is that a person in insolvent circumstances cannot make away with his property except for a contemporaneous equivalent. If he receives such an equivalent, his creditors, of course, lose nothing by the assignment. It will be observed that time is important under that section from two points of view: first, with regard to the condition that the giving of the consideration must be contemporaneous with the assignment; and, secondly, from the subsidiary point of view that if the debtor, although in insolvent circumstances, escapes for six months from having a petition presented against him, the transaction cannot be impeached.

The case opened by the appellant before the learned Judge of first instance was that the bill of sale in question was dated 30th May, but was not registered until 18th August; that by the bill

of sale itself it appeared that the consideration was paid contemporaneously with the execution, and was, therefore, not contemporaneous with the registration; that, in the meantime, the assignee was an unsecured creditor of the debtor; and that, consequently, as under the *Bills of Sale Act* the date of the first registration is to be deemed to be the date of execution, this instrument, which under the Statute is to be deemed to have been executed on 18th August, was void as being given for a past consideration. On the case being opened, and before any evidence was given to show that the debtor was in insolvent circumstances, the learned Judge intimated that he thought that the appellant could not succeed. The point of law was then argued, and he came to the conclusion that the appellant was not entitled to succeed in any view of the facts, and dismissed the motion with costs. On appeal, the Full Court, by a majority, *Chubb*, J., dissenting, agreed with the learned Judge of first instance, and dismissed the appeal.

The question for our determination depends upon sec. 4 of the *Bills of Sale Act* of 1891, which provides: "Every bill of sale executed after the commencement of this Act shall be registered in the proper registry in the manner prescribed by this Act, and shall truly set forth the consideration for which it was given, and no such bill of sale shall have any effect as to any chattels comprised in it, whether as between the parties to it, or as against any other person, unless the consideration is truly set forth therein, nor until it has been so registered." That is to say, a bill of sale takes effect not by execution but by registration. Until it is registered it is nothing. It may contain the record of an agreement between the parties, but it has no operation whatever as an assignment until it is registered. The section goes on —"and for the purposes of any law avoiding assignments as against creditors, the date of the first registration of any such bill of sale shall be deemed to be the date of the execution of the bill of sale."

For the appellant it was contended before the Supreme Court, and before us, that, interpreting these words according to their plain language, the date of this bill of sale, if it comes in question in a proceeding seeking to avoid it as against creditors, is the date on which it was first registered; that that date was 18th August;

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and, that that fact being ascertained, the only inquiry that remains is, was the consideration contemporaneous? And, as the consideration was paid on 30th May, the only answer to that question is, of course, "No, it was not contemporaneous." Three of the learned Judges of the Supreme Court have refused to accept this view. We find some difficulty in formulating the argument on behalf of the respondent, having regard to the explicit language of sec. 4, which provides that the date of registration is to be deemed the date of execution, and further provides that until registration there is no assignment. If the date of the assignment is 18th August, how can it be said that the consideration, which was given on 30th May, was given at the time? It is not in controversy that, in this interval, the respondent was an unsecured creditor. Counsel for the respondent asked us to hold that the only effect of the section is that the time from which the period of six months is to be reckoned is the date of registration. Of course, it is quite clear that the six months must be reckoned from that date; but the words of the section are "for the purposes of any law avoiding assignments." As has been already pointed out, the main importance of the date under sec. 108 is for the purpose of the inquiry whether the consideration is contemporaneous with the assignment. If the consideration is paid in May, and the assignment takes place in August, it is impossible to say that the one is contemporaneous with the other. If the words were "for the purpose of computing the period within which a bill of sale may be impeached under any law avoiding assignments as against creditors," the construction contended for would, no doubt, be the correct one, but the words are general, and cover every case in which, under the Insolvency Law, the question of the date of a bill of sale is material. There is nothing in the section to suggest that a fictitious date is to be attributed to the giving of the consideration, but much to indicate a contrary intention.

The rules for the construction of Acts of Parliament have been many times laid down. A statement of the law very applicable to the present case is to be found in the opinion of the Judges in the *Sussex Peerage Case* (11 Clark & Finnelly, at p. 143), delivered by Lord Chief Justice *Tindal*: "My Lords, the only rule

for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law giver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the Statute, and to have recourse to the preamble, which, according to Chief Justice *Dyer*, is 'a key to open the minds of the makers of the Act, and the mischief which they intended to redress.'"

Now, to apply the first branch of the rule, and expound the words in their natural and ordinary sense: What is the natural and ordinary sense, first, of the words "no such bill of sale shall have any effect as to any of the chattels comprised in it . . . until it has been so registered," and then of the words "for the purposes of any law avoiding assignments as against creditors the date of the first registration . . . shall be deemed to be the date of the execution of the bill of sale?" When the *Bills of Sale Act* was passed the *Insolvency Act* of 1874, under which assignments to creditors for considerations not contemporaneous, were liable to be avoided, had been in force for 27 years. It may, therefore, be assumed to have been present to the minds of the legislature. There is no ambiguity in the words. When any such question arises, the date of first registration is to be deemed to be the date of execution. The date of first registration in this case is 18th August. That is, therefore, to be deemed to be the date of execution. Then comes the inquiry: "Was the consideration given at the time?" The answer is; the consideration was given in May, not in August. That is expounding the words in the natural and ordinary sense. Assuming, however, that the words are capable of a different construction, or, that, although the words are "for the purposes of any law avoiding assignments as against creditors," the expounding of these words in their natural and ordinary sense would lead to some manifest absurdity, which has not been suggested, then regard should be had to the second rule:—"If any doubt arises from the

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terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the Statute." Now, if we consider the cause of the making of the *Bills of Sale Act*, it will certainly not lead us to a contrary conclusion. The original *Bills of Sale Act* was an Act to mitigate the evils arising from secret bills of sale. Provisions were made for registration, but they were not found to be effectual. By the Act of 1867 those provisions were repealed and others substituted, and the later provisions were again repealed in 1891, when the legislature laid down the new rule that there should be no effective bill of sale until registration. That is to say, it did not validate, but abolished, secret bills of sale. A secret bill of sale is impossible under the law of 1891, because it is not a bill of sale at all. That being the apparent intention of the legislature, and those being the means adopted to carry out their intention, is there anything inconsistent or absurd in holding that the date of the assignment is what it is said to be by the Statute, and that the date of giving the consideration is the date on which it was given in fact? The construction which found favour with the Supreme Court would make the Act an Act to facilitate and validate secret bills of sale. A man might carry on business for years after giving a secret bill of sale; all his property might be supposed by the world to belong to him and to be available in satisfaction of his debts, whereas in reality some other person would have in his pocket a document which, when registered, would take away the whole of that property from his creditors and give it to that other person; and this result, under the construction which has been put upon the Statute by the learned Judges who were a majority of the Supreme Court, would be in accordance with the law, although the plain and manifest object of the Act is to abolish secret bills of sale. For these reasons it appears to us quite clear that, since the effective date of the execution of the bill of sale is the date of registration, if the consideration is not contemporaneous with the registration, the transaction is obnoxious to sec. 109 of the *Insolvency Act*. It is said that the consequence will be that a man who lends money to a person in insolvent circumstances will be obliged to register the bill of sale as soon as it is given. Supposing that that is a necessary consequence, we

can only say, looking at the Statute, that it appears to us to be the manifest intention of the legislature.

We think, therefore, that the decisions of the learned Judge of first instance, and of the Full Court, were erroneous, and should be reversed. The facts have not been investigated, the case having been treated as one to be decided upon a preliminary point of law. The only order, therefore, which we can make is that which is now made, namely, that the decisions appealed from be reversed, and the matter be remitted to the Supreme Court to be dealt with according to the law as now declared. The respondent must pay the costs of the appeal to the Full Court and of this appeal.

Appeal allowed. Decisions appealed from reversed. Respondent to pay costs of appeal to Full Court. Case remitted to the Supreme Court to do what is right in pursuance of this judgment. Respondent to pay costs of this appeal.

Solicitors for the appellant, *O'Sullivan & Scott.*

Solicitors for the respondent, *Macpherson, Macdonald-Paterson & Co.*

[HIGH COURT OF AUSTRALIA.]

STATE OF TASMANIA . . . . . PLAINTIFF;

AND

COMMONWEALTH OF AUSTRALIA AND STATE OF VICTORIA . . . . . DEFENDANTS.

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MELBOURNE, *June* 1, 2, 3, 8.

Griffith, C.J., Barton and O'Connor, JJ.

The Constitution, secs. 89, 92, 93—*Duties of Customs and Excise—Importation of goods into State before imposition of uniform duties—Passing of goods afterwards into another State for consumption—Apportionment of duties between States—Interpretation of the Constitution—History of legislation—Reference to draft bills prepared by Conventions.*