

FREDERICK CHAPPLE, CHARLES BOLINGBROKE, Deception > bankruptcy, Deception > bankruptcy, 9th March 1891.

296. FREDERICK CHAPPLE, Unlawfully disposing of certain property, which he had not paid for, within four months of his bankruptcy; and CHARLES BOLINGBROKE, aiding and assisting him in the same. *Other Counts*, for conspiracy.

The Prisoners, by the advice of their Counsel, declined to plead, upon which the COURT directed a plea of NOT GUILTY to be entered.

MR. BESLEY and MR. STEPHENSON *Prosecuted*, MR. GRAIN and MR. BIRON *appeared for Chapple*, and MR. H. AVORY and MR. P. TAYLOR *for Bolingbroke*.

CHARLES L'ENFANT. I am a clerk in the Bankruptcy Court - I produce the file of proceedings in this matter - Chapple described himself as of 1, Pall Mall, cigar merchant, and of 29, Oxford Street - he was adjudicated bankrupt on 18th October, 1890, and Frederick Geoghegan was appointed trustee on 23rd October, 1890 - the public examination was on March 12th - on November 17th there was a private examination of Bolingbroke - Mr. Reaford was appointed receiver.

Cross-examined by MR. AVORY. Bolingbroke was examined merely as a witness, he was not a bankrupt - there are no proceedings on the file taken by the trustee, for the purpose of setting aside the transfer of the premises, nor have any been taken that I am aware of.

PERCY ROBERT CHANDLER PULLEN. I produce the receiving order and the file of the official receiver, also the answers to the Board of Trade

questions. (*These gave Chapple's statement of his debts, property, and policies; he stated that his betting debts were £410 and £276; that he had traded at a loss for the last three years, and offered his creditors 6s. 8d. in the pound.*) - I have also got the statement of affairs. (*This showed liabilities £3,651 15s., creditors partly secured £200, assets cash £9 6s. 1d., stock in trade £600, plant and machinery £150, life policy £30, book debts £419, betting debts £410 and £276, etc., leaving a deficiency of £1,900 2s. 6d.*) - I had £9 from the bank.

Cross-examined by MR. GRAIN. A day is fixed for a bankrupt to go before the official receiver or one of his officers, who reads out the printed questions and writes down his answers, and the creditors propose a trustee, and if his name meets with the approval of the Bankruptcy Court and Board of Trade, he becomes trustee, and takes over all that the official receiver has received.

Re-examined. When the answers are taken down the bankrupt reads them, and states, "I have carefully read over the foregoing questions and the answers thereto," and signs or initials every page. (*The transcript of the shorthand notes of Chapple's examination was here put in and partly read; also the examination of Bolingbroke, and an agreement between the two defendants for the transfer to Bolingbroke of the lease of 29, Cockspur Street, for twenty-seven years, with goodwill, stock-in-trade, and fittings, subject to a mortgage.*)

CHARLES L. BARBER. I am an official of the Bankruptcy Court - these are the stock sheets - I think Mr. Nethersole, the solicitor for one of the defendants, produced them - they begin with 3,400 cabanas. (*Reading the list of cigars and cigarettes*) - it goes to four pages, and comes out £335 17s. 9d. - the fixtures are carried out at £170 in the summary.

Cross-examined by MR. AVORY. Bolingbroke was examined as a witness - there was no caution that he might be charged with a criminal offence; that is not the practice.

Re-examined. Private sittings are for the purpose of getting information; there is nothing unusual in them; they are conducted in the same manner as all other private sittings.

SPIRO DAMBURGI. I am a cigarette manufacturer - I first knew Chapple in May, 1890 - I went to 1, Pall Mall and found him there - he asked for samples of my cigarettes, and said he had another shop at 29, Cockspur Street, and wanted some goods there - next day I went to 29, Cockspur Street, and Chapple said he wanted some cigarettes, rather a good quality, as he wanted to make a good show, but did not want to buy a large quantity, and suggested having them on sale or return; he fixed the quantity at 33,000 - I agreed, and sent them to Cockspur Street on June 2nd - I went there once or twice afterwards and saw them there, and later on I went to know how many he had sold, but got no return - I did not receive a farthing payment, nor did I get back any of my goods - I saw Bolingbroke there after the bankruptcy; I heard that he was Chapple's brother-in-law.

Cross-examined by MR. GRAIN. I have proved in the bankruptcy for about £96 - I was very anxious to introduce my new brand of cigarettes; he said he would push them as much as he could.

ARTHUR ROGER CARTER. I am manager of the Alexandra Cigarette Company, 4, Arthur Street - early in January, 1890, I supplied Chapple with 5,000 Dragoony cigarettes, value £15, at 1, Pall Mall; and a similar lot afterwards - I delivered altogether at Pall Mall about £60 or £70 worth, and in May my traveller brought an order for 20,000 for Cockspur Street - I went and saw Chapple, and told him I did not care about the account being so large, and I asked him to reduce it; it was then £70 or £100 - he said that he was not particularly flush of money, having spent a large sum in doing up the new shop - I do not think he had opened for business, but there was some stock there, and the fixtures were in - I said I should like the account reduced before I sent in more goods - he said he had always paid twenty shillings in the £, and he always would - that was between May 22nd and June 1st - he said, "The lease of this place is worth £1,000; I could walk out of here to day and have a cash offer for it" - I believed that statement, and sent him £40, with more goods, on June 13th on the

ordinary three months' account, but he promised me a cheque within two or three weeks; I believe there was a small parcel after that - my debt is about £130 - I never got a penny from him, but I have had a small dividend to-day - I passed Cockspur Street shortly after the business was transferred, and saw "Bolingbroke" very small over "Chapple" very large, and the window was dressed with my cigarettes - no information was given to me of the transfer of the business.

Cross-examined by MR. GRAIN. I have received a dividend of 2s. in the £, I hope it is not a final one; I sued him about September 13th, and issued execution; the Sheriff went to get possession and found two persona there before him - I then saw Chapple and offered to take £25 in cash and the remainder in bills to assist him, believing he was only temporarily embarrassed - the reason I complain of him is that he obtained credit from me by saying that he was a richer man than he really was - before I parted with the goods I told him I did not believe he was worthy of £60 credit.

Re-examined. The £60 was before I parted with the 20,000 cigarettes - I offered to take £25 in cash and the remainder in bills, to assist him, but he came next day and said he would not do it - he offered 6s. 8d. in the £, but the Official Receiver said it was evidently a case for bankruptcy.

JAMES LEWIS BLUMFELD . I am a partner in the firm of Fracknell and Co., of Queen Victoria Street - we had dealings with Chapple, at 1, Pall Mall, for a good many years - at the beginning of 1890 he owed us about £300, there were several bills running, but they were allowed to fall in; they were for goods supplied before the Cockspur Street shop was open, and after it was opened we supplied £380 worth of goods - at the time of the bankruptcy £320 was owing to us; the debt had not been diminished - it was represented by a bill - the earliest parcel sent to Cockspur Street was £160 15s., and to the other shop £360 - the Cockspur Street goods were settled for before the bankruptcy, except £10 - we never sued on the dishonoured bill - we got a charge on Cockspur Street of £500 which we were supposed to advance on the lease; he kept the remainder: that left £380 unaccounted for - the £500 was paid off in January this year - we have not deducted that, we have proved for the goods at Pall Mall - Cockspur Street account has been settled except £10, which was provided for - the loan of £500 was owing at the time of the bankruptcy - about the end of August I heard that Chapple had sold his Cockspur Street business to his brother-in-law, and I asked him if it was true; he said it was, and that Bolingbroke had given him three bills, but he had not received any cash - I asked why he had sold the shop, because he had been very keen in getting possession of it; he said, "One never knows what may happen, and I wish to protect the shop" - he at first said that the bills would be met, and in further conversation he said if things went on all right the sale would be regarded as null and void - I said, "It seems to me to be a bit of sharp practice" - he said it might seem so to the uninitiated, but he had one of the best solicitors in London to act for him, and he was on the safe side of the law - Mr. Fracknell, who put the questions to Bolingbroke at the private sitting, is a member of the bar and a relative of my partner.

Cross-examined by MR. GRAIN. We have dealt with Chapple some years - he knew at that time that we were his creditors - we are not the largest creditors, we are second or third - he knew my father held the lease of the Cockspur Street shop, and he kept repeating that it was in my fathers interest to overlook this - his bills were all renewed, and were ultimately honoured - all he owed us was £320 - the equitable

mortgage of the lease was made out in February, 1890 - my father in his private capacity lent £500 on the deposit of that lease, Chapple then owed my father £320, and he selected goods value £360, and said he would give us the difference - we have proved for the £320 - our credit was for three months, subject to arrangement - a legal mortgage was executed before the bankruptcy.

Cross-examined by MR. AVORY. About the end of October we gave seven days' notice to Bolingbroke, who was in possession of Cockspur Street, to pay off this mortgage - I believe it was payable on demand - he paid us £500 in January, we then had to take possession if he did not.

Re-examined. £350 and £500 came back to my hands - the first goods were sent to Cockspur Street on 11th May - I believe we got security at once by deposit of the lease - after saying that the bills would be met, Chapple gave me the impression that the whole thing was to be cancelled - I am quite sure he spoke of the sale being nil and the bills being met.

AMOS THOMAS COLLINS . I am clerk to Sidney Chapman, solicitor, Pancras Lane - Thomas Porter and Sons are their clients - this writ marked C was issued against Chapple at the suit of Porter and another by my directions - it claims £364 12s. 6d. principal and interest on a bill payable on July 1, 1890 - I am instructed that that was a renewed bill that writ was served on February 9th, and he called on the 17th and said that he did not intend to enter an appearance to the action, but he was desirous of arranging terms - I said that before any terms were entered into my clients were annoyed at the business being transferred - he explained that Mr. Bolingbroke was his brother-in-law, and that the transfer was made to protect his wife and family in view of impending difficulties - I asked him the particulars; he said that his brother-in-law was a steady man, but that he himself had been betting and got himself into trouble, and wanted to protect his wife and family; he had been neglecting his business for betting, but his brother-in-law was a steady man who would keep things going - I asked him the consideration; he said, "Bills to the tune of £579" - I asked him the dates; he said, "At six, twelve, and eighteen months" - I inquired why he took bills at such long dates seeing he was pressed by his creditors, and referred him to one of the penal clauses of the Debtors' Act, in reference to selling goods for which he had not paid, and I read the sub-section; he said he had no idea of that section, but it was done and he must abide by it - he said he held the lease of the Pall Mall shop, and the landlord wanted possession of the premises, and he thought he should get some respectable compensation, and should be able to pay his creditors; that the lease was charged to the extent of £200, and he was willing to charge it to Messrs. Porter, to secure their claim of £364 and a bill coming for a greater amount - I arranged to see Messrs. Porter, and to communicate with him again, and in the evening I called at Pall Mall and informed him that Messrs. Porter were willing to give him time, provided he could secure their plan; I suggested that he should give a second charge on the lease, and he arranged to obtain it for my inspection, and I told him if he could induce Mr. Bolingbroke to accept bills at a shorter date, so as to become marketable, Messrs. Porter might accept them - he said he would send the lease, but he did not send it till after I issued execution - I made myself acquainted with it, and returned it as valueless; I asked him how much of Porter's goods were at Cockspur Street - he said, "About £300" - this is the judgment-paper for £365 4s. 5d. - another bill fell due shortly after that - I did not see Chapple after judgment was signed, but after the

bankruptcy he called and made the proposal of 6s. 8d. - Porter and Son's debt was £680.

Cross-examined by MR. GRAIN. I went to the Pall Mall shop on the Monday after 17th September, not November; that is a mistake in copying; the petition was before November - I was quite willing when I first saw him to take Bolingbroke's bills on behalf of my clients, and did not know then that Chapple could not meet his liabilities; he was unable to pay his debts as they fell due - I wanted to have my clients preferred over the other creditors, and was putting pressure on to get as much as I could for them - I heard that the only bill that has come due was met on the day it came due - before he agreed to any proposition to endorse the bills to me he said he must consider the matter - he did not say that he must consult his solicitor - if he had said he would not be a party to giving my clients a fraudulent preference I should certainly have recollected it - I will not swear I did not say that my clients would take the risk of that.

Re-examined. At that time £600 was owing to my client.

ROBERT THOMAS WEST . I am managing clerk to Wilson, Bristow, Carpmael. and Co, solicitors, of Copthall Buildings - they act for the Royal Mail Steam Packet Company - I produce the assignment of the lease of 29, Cockspur Street, dated 3rd January, 1891; Francis Broomfield and Bolingbroke joined in it; the consideration was £600 - this does not refer to the fixtures - the other papers are an equitable charge of February 24th, 1890, by Chapple, and another equitable charge of May, 1890, and a mortgage of August 20th from Chapple to Bloomfield.

Cross-examined by MR. AVORY. My clients did not give more than the lease was worth; I believe Bolingbroke was in possession at the time, carrying on the business.

ROLAND ELLIS DE VESIAN . I am a solicitor, of Crown Court, Cheapside - I was the solicitor to Mr. Bloomfield in the legal mortgage; the other two were put into my hands after they were executed - I prepared the mortgage of August 20th - I did not then know of the agreement of 16th August by which Chapple handed over to Bolingbroke the whole of the stock - I was not present when the £350 was paid on the equitable mortgage - no money was paid on the actual mortgage, Mr. Chapple executed it; he was not represented by a solicitor - he said nothing whatever about Bolingbroke - after the bankruptcy I conducted the negotiations resulting in the sale to the Royal Mail Steam - this assignment is the deed in reference to it - the £600 for the lease was paid, and I believe £30 for fixtures, but that is not expressed in the deed - the balance was handed over to Mr. Tuff, the solicitor - I am acting for Mr. Geoghegan - I advised the trustee in this matter.

Cross-examined by MR. AVORY. Bolingbroke's solicitor had the balance, £80 or £90 - it is possible that Bolingbroke did not receive a farthing of it after paying the solicitor's and agent's costs - there was £509 mortgage money, about £9 4s. for interest, and £13 9s. my costs - I know nothing about the auctioneer's charges - I should think £31 very excessive - I know nothing about taxes to be paid; there were probably Mr. Tuff's costs - I had given seven days' notice to pay off the mortgage, and threatened to foreclose if he did not - I subsequently took proceedings in Chancery to foreclose, and Bolingbroke had ultimately to pay £21 costs; he should not have defended it if he had no defence - I do not think that Bolingbroke would have been

there still carrying on the business but for the proceedings on my part; he desired to get rid of the premises.

Re-examined. Before the sale there had been the examination of Bolingbroke at the private sittings, and I was aware of what he had stated there - Chapple's bankruptcy had occurred before I gave the seven days' notice - at the time of the mortgage of 20th August I knew nothing about it; I gave seven days' notice shortly afterwards - the foreclosure action was in November - the policies on his life, which had been in existence twelve years, were handed over by Mr. Tuff about November 20th to the trustees, after some bother, after Bolingbroke's examination - the policies have been surrendered.

By MR. AVORY. When the legal mortgage was executed by Chapple to Bloomfield he mentioned the transfer which had been made to Bolingbroke; if I had been aware that he had assigned the lease I should have doubted whether it was of any value - I am aware now that the assignment to Bolingbroke was subject to the mortgage, but I knew nothing about it then - it made no difference to my client whether Chapple mentioned Bolingbroke's name at all - I called on him to make the legal mortgage in pursuance of his undertaking.

LOUIS MOLLET . I am employed by Thomas Porter and Son, cigar importers, Great Tower Street - I produce a list of the transactions between the firm and Chapple - the bill of £365 10s. is for goods supplied up to February 19th inclusive - on 28th April a large parcel of cigars, value £184 16s. 6d., was delivered at 1, Pall Mall, and on May 1st, £131 12s. 3d. at Cockspur Street, and there was 6s. for a small item," making £356 15s. 9d. due at the time of the bankruptcy - some of the cigars correspond with the description of those sent to Cockspur Street, and some with those sent to Pall Mall - I went to Cockspur Street on November 10th and saw 1,500 cigars of different brands, which had been transferred there.

Cross-examined by MR. AVORY. I knew that Chapple was carrying on business at Cockspur Street - I actually supplied some goods to Cockspur Street - when I saw the goods there I only went back and told my employers what I had seen; I did not make a complaint - I do not mean to suggest that anybody else did.

SYDENHAM HALL . I am a clerk in the Bill of Sale Office of the Queen's Bench Division - I produce a copy of the original affidavit under the Bill of Sale, dated January 1st.

THOMAS LAPTHORNE . I am a builder, of High Street, Lambeth - about the middle of April, Chapple instructed me to fit up his shop in Cockspur Street - I finished it about June 1st; the account came to about £160, but only £120 was for Cockspur Street, the remainder for Pall Mall - I proved for the debt in bankruptcy - I put in ordinary shop fittings at Cockspur Street, mahogany, and silver plate-glass of the best class.

FRANK GEOGHEGAN . I am a chartered accountant, of 8, Old Jewry - I was appointed trustee on 23rd October in Chapple's bankruptcy - the official receiver collected £110, and handed over £64 or £65, which came over after he had deducted his expense - I proceeded to realise the estate; I sold the stock-in-trade at 1, Pall Mall for £329; Mr. Harroway was the nominal purchaser - Mrs. Chapple conducted the business, but she

did not have the stock, a lot of stock was transferred from Cockspur Street, since the sale to the Royal Mail, I believe - the policies realised £24, and there are £50 or £60 worth of debts - we have declared a dividend of 2s. in the pound - £3,415 debt was proved - I expect to pay another 2s. 6d. in the pound if Bolingbroke's two other bills are paid, which are due next year - I have had all the assets from the first bill; they formed part of the 2s. in the pound - the landlord had to be paid, because he had a preferential claim on 1, Pall Mall - no household furniture was delivered up to me - I never had possession of the stock-in-trade and fixtures at 29, Cockspur Street - I took Counsel's opinion as to setting aside the sale of 29, Cockspur Street and taking possession - I was aware of the circumstances of the transfer before Bolingbroke's examination at the private sitting; but I found he was selling the stock and not replenishing it - I had a committee of inspection to assist me - I applied through my solicitor for the order to prosecute both the defendants - but for this transfer I should have received whatever the stock at 29, Cockspur Street would have fetched, and the balance of the mortgage to Fracknell and Co. - the lease at Pall Mall was nearly out, but there was a bankruptcy clause; I tried to get a fresh lease.

Cross-examined by MR. AVORY. But for the bankruptcy clause, it would have been reasonable to assume that the lease of 1, Pall Mall was worth something - pulling down that corner block has been talked about, but a person having that lease would not be entitled to compensation with that clause in the lease, it is open to some doubt - I might, if I chose, have carried on the business till I saw it necessary for the beneficial winding up, and I did so for a fortnight - I sold the stock-in-trade - I made no objection to Mrs. Chapple carrying on the business; the only point was as to the transfer of the stock from Cockspur Street there - I actually sold the stock at Pall Mall, and had nothing more to do with the business - if the Cockspur Street business had come into my hands as trustee I could have made more than £600 out of the lease and stock - I sold the fixture and such of the stock as remained, as a going concern, at much higher than I could have sold it at a bankrupt sale - I do not suppose I could have got more than £630 for the lease and fixtures - I knew there was a mortgage of £500 which I should have had to pay off - I should have had the solicitor's costs, but not the auctioneer's, if the Cockspur Street business had formed part of the assets; I should not have earned on the business - I said at the Police-court, "Considering all the circumstances, I cannot say whether I should have adopted or disclaimed the lease if it had been in the possession of the bankrupt when I was appointed trustee" - if a lease is charged, that is one of the things which would influence me in disclaiming it - it was in conjunction with the committee of inspection that I decided not to take any proceedings in bankruptcy to set aside these transfers to Bolingbroke after Bolingbroke's private examination and after legal advice, and the committee of inspection would not give me leave; they said they did not consider it advisable, as the stock was reduced so low, to run the risk of being beaten - there always is a risk of being beaten - I have no reason to dispute and no reason to believe that Bolingbroke paid £100 to Chapple for the furniture - the bill for £120 was the first bill of Bolingbroke's, which was met in February, made payable at and honoured at the Consolidated Bank, Charing Cross; that is Bolingbroke's bank - the other bills are made payable at the same bank - beyond the furniture and the stock sent to Cockspur Street I do not think there is any other asset which has not been delivered up to me - one reason of my complaint of this transfer and of my not taking over the business is that the stock has been reduced at Cockspur Street - there was not so much stock there when Chapple was bankrupt as when the place was originally stocked - if Chapple

had been carrying it on all the time, I do not think the effect of keeping up the stock would be simply incurring more debt, because he would have to buy cheaper than he sold, and would make a profit.

Cross-examined by MR. BIRON. I calculated the book debts at Pall Mall at about £210 - that does not include the £50; there were two amounts of £30 each, which were incurred during minority - the £200 I have collected does not include them - there is £50 in good debts still outstanding - that £200 is outside the £150 - I have attempted to collect that, and have not succeeded - I said, "There were legitimate debts due to Chapple"; according to his books - I estimated the £250 due to Chapple, and the £200 which I have collected, and there is another £200 due to Chapple which I doubt whether I can collect - I did not estimate that as assets in estimating the dividend - I wanted to get a continuation or renewal of the lease of 1, Pall Mall for a purchaser - Mr. Tod Heatley is the landlord - I applied to his agent, and among the reasons why he would not give me a lease was because alterations were contemplated, and he wished to keep the property in his hands.

Re-examined. Chapple's lease from Mr. Tod-Heatley is subject to six months' notice, so that if the block was pulled down there would be no compensation at all - all the betting debts are put down as doubtful Chapple might have been bankrupt if he had kept Cockspur Street but the deficiency would have been a small one - I cannot say that all the stock was removed to Pall Mall - I do not know that any of the stock I sold went back to Pall Mall - my sale at Pall Mall was about November 30th - I had been instructed to prosecute on December 15th, and they were actually before the Magistrate the day before, and the day after the bill fell due - I have the two bills in my possession.

Cross-examined by MR. AVORY. I am not prepared to say that Chapple's house at Balham was more than an eight-roomed house at £40 a year - the house was not assigned, but the furniture was - I cannot say that it is not fourteen years old; I have not looked at it.

Re-examined. This is the schedule to the bill of sale; I received nothing in respect of furniture, plate, linen, or glass.

MR. AVORY *submitted that, as Chapple presented his own petition, all the counts charging offences within four months of his bankruptcy were bad, namely, the 1st, 5th, 10th, 11th, and 12th, as the Debtors' Act of 1869 only applied to cases where a petition was presented "against" a man; and although the Act of 1890 contained the words, "after the presentation of a petition by or against him" that Act did not come into operation till January 1st, 1891, and consequently did not apply to this case.* MR. BESLEY *submitted that the reasonable meaning of the Act of 1883 was that "by or against" was to be incorporated. The RECORDER stated that he would consult MR. JUSTICE HAWKINS, and reserve the point if necessary.*

GUILTY . - *Six Months' Hard Labour each, concurrent, upon each Count of the indictment.*

MR. AVORY *then submitted that if these Counts were bad, a general verdict having been returned upon the whole indictment, the verdict was bad and should be quashed;*

Q. v. Burden, 21 Q.B., p. 24; and Q. v. Fuidge: Lea and Cave; Beg: v. Gibson, 18 Q.B.D. 537.

The RECORDER, after hearing MR. BESLEY and MR. STEPHENSON in reply, stated that he would give his decision at the next Session.