

and I presume that this is a matter than can be dealt with by the assignee in settling with the various claimants.

One of the grounds for setting aside the judgment is that of irregularity, but I do not understand that it can on this ground be attacked collaterally or in the present action. I do not, in fact, see that we are called upon to say anything whatever about the judgment, and, in my opinion, justice will be done by allowing the appeal with costs and varying the order for judgment by striking out the second paragraph.

LONGLEY and DRYSDALE, JJ., concurred.

TOWNSHEND, C.J.:—I agree with Russell, J., in affirming the decision of the trial Judge that the bill of sale is fraudulent under the circumstances of its execution, and the agreement not to register and file it, and that the sale to Charman within sixty days of the commencement of this action was in contravention of sub-section 12, sec. 4 of the Assignments Act. I differ, however, from my brother Russell in respect to the judgment taken on the note given contemporaneously with the bill of sale to the defendant, Morrison. I agree with the Judge below that the taking of the judgment on this note at the time was a part of the fraud to give defendant a preference over Bett's other creditors, and should be set aside and declared null and void. The learned trial Judge decides that there was only \$450 due on the note at the time the judgment was taken for \$1,870, and concludes that this alone was evidence of the fraud and is a sufficient reason for setting it aside on the authority of several cases cited in the judgment. It is clear from Morrison's own testimony that at the time he sued on the note and at the time he obtained judgment there was no such amount due him on the note—that, in fact, so far as the note represented Betts' indebtedness at the time it was given, he had, by payments, largely, if not entirely, paid it, and that and further indebtedness was for goods subsequently supplied, not covered by this note at all. He says in cross-examination: "Yes, at the time of the giving of the bill of sale this account was carried in the bank by me on paper of various amounts and due at various dates; these notes would come due and Mr. Betts invariably made his remittances to me, whatever they were, instead of the bank. These notes which made up the amount of the bill of sale were carried on from time to time. Sometimes he paid them;