

MASTEN, J.

OCTOBER 16TH, 1918.

*WADE v. JAMES.

Assignments and Preferences—Assignment for Benefit of Creditors—Sale of Goods Belonging to Insolvent Estate by Assignee to Creditor—Inspector of Estate—Constructive Trustee—Resale at Profit—Right of Assignee to Account of Profits—Proof that Goods Sold and Delivered and Purchasers Solvent—Defence in Law—Inability of Creditor-inspector to Recover from Purchasers.

Appeal by the defendants from a report of the Master in Ordinary.

The action was brought by the assignee for the benefit of creditors of Krieger Brothers, insolvents, for an account.

The defendant Philip James was a member of a partnership known as the Toronto Clothing Manufacturing Company, creditors of the insolvent, and was an inspector of the estate of the insolvents. He bought from the plaintiff the stock of goods of the insolvent estate for \$3,587, and, contemporaneously, sold it to the wives of the insolvents for \$5,500—\$1,500 cash and \$4,000 secured by promissory notes from the purchasers.

By the judgment in the action the defendants were directed to account for the profit made or to be made by the defendants out of the transaction.

The Master found that the defendants' profit amounted to \$1,739.25; and the appeal was from that finding.

The appeal was heard in the Weekly Court, Toronto.

I. F. Hellmuth, K.C., for the defendants.

A. C. McMaster, for the plaintiff.

MASTEN, J., in a written judgment, said that the defendants contended that no profit was made or to be made, because no recovery was possible by the defendants against the purchasers, citing *Hochberger v. Rittenberg* (1916), 36 D.L.R. 450, 452, and *Grant v. Gold Exploration and Development Syndicate Limited*, [1900] 1 Q.B. 233.

The plaintiff referred to *Day v. Day* (1889), 17 A.R. 157; *Shaw v. Jeffery* (1860), 13 Moore P.C. 432, 455.

When Philip James, being an inspector, received the stock of goods of the insolvent estate, he became a constructive trustee, but that did not prevent him from selling the goods, and he did sell and deliver them, and his action against the purchasers would be for the price of goods sold and delivered. The goods had been