

valid, for an account of the assets, goods, wares, and merchandise of the insolvent company held by the defendants and of the proceeds of the sale of any part thereof sold, and for delivery of the securities to the plaintiff liquidator.

The action was tried without a jury at St. Thomas.

Sir George Gibbons, K.C., and J. B. Davidson, for the plaintiffs.

D. L. McCarthy, K.C., and A. W. Langmuir, for the defendants.

SUTHERLAND, J., in a written judgment, after setting out the facts, said that it was held in *Bank of Hamilton v. Halstead* (1897), 28 S.C.R. 235, that an assignment made in form C. in the appendix to the Bank Act, R.S.C. 1906 ch. 29, as security for a bill or note given in renewal of a past due bill or note was not valid as a security under sec. 74—the bills or notes may be renewed, but not the security; the Act does not authorise the substitution of one assignment for another (p. 241). It was contended for the plaintiffs that there was in reality the same course of dealing between the defendants and their customer in this case as was held to be invalid in the *Halstead* case. It seemed to the learned Judge, however, that the defendants were from time to time making advances and taking security under sec. 88 on the new goods which were coming in. The goods were from time to time changing as old stock was sold and new stock brought in. A separate note and security were taken for each advance. A general security was also taken referring to all outstanding notes as to each of which a previous individual security had been taken.

This could not be called a substitution, but rather a consolidation. With some difficulty and doubt in the matter, the learned Judge's conclusion was that, subject to the qualification about to be referred to, the securities taken by the defendants under sec. 88 must be held to be valid as against the plaintiffs. In the case of a manufacturer, the defendants had a right, on the strength of written requests, to make advances on the goods, wares, and merchandise, raw, manufactured, and in process of manufacture, of their customer, and take security thereon in the form C. provided in the Act. There was no authority, however, therein for the defendants taking the like security on goods purchased by them from other manufacturers with which to carry on as a side line of their business, a jobbing business. To the extent that the securities previously taken and held by the defendants at