

20. That where an action is brought by a creditor of an insolvent, in which he demands that the proceeds of drafts transferred to another creditor, with instruction to remit the said proceed to a third creditor, be paid to the curator, on account of the said third creditor having renounced to these proceeds, is not an action *pauliana* which falls under the prescription of one year of article 1040 C. C., but is an action under 1031 C. C.

Civil Code, articles 1031, 1040.

The plaintiff, duly authorized by the court to take the present action, the curator and inspectors named to the insolvent estate of Shear & Eliasoph, alleges that on the 19th day of April 1909, the said firm insolvent Shear & Eliasoph, who have made, on the 24 April 1909, a judicial abandonment of property for the benefit of their creditors, made several drafts to the total amount of \$702.69 on divers of their customers, payable at the order of A. Friedman & Co., which firm is the female defendant acting therein through her husband, the male defendant, and transferred, the same day to them; that, at the same time, said firm insolvent requested the defendants that the proceeds thereof when collected be paid to the American Silk Waist Manufacturing Co., in payment of previous advances, which request was agreed to; that the defendants who collected the said drafts failed to pay the proceeds thereof as directed, they having given no other consideration for said draft; that the American Silk Waist Manufacturing Co. have renounced, after the abandonment of property of said firm, to the proceeds of said draft for the benefit of the creditors of the estate in general; that said proceeds belong to the estate of said insolvent; that the defendants refused to hand over said proceeds to the curator of the insolvent estate; that he is a creditor of said insolvent and is entitled to exercise the rights and recourse of