

FALCONBRIDGE, C.J.K.B.

MARCH 16TH, 1914.

LANGLEY v. SIMONS FRUIT CO.

Assignments and Preferences—Transfer of Goods by Trader to Creditor—Insolvency of Transferor—Absence of Knowledge by Transferee and of Intent to Prefer—Actual Cash Advance of Money on Goods Consigned for Sale—Assignments and Preferences Act, 10 Edw. VII. ch. 64.

Action in the name of the assignee, under an assignment for the general benefit of creditors, of the Better Fruit Distributors Limited, an insolvent company, by Norman H. Karn, a creditor of the company, authorised by order of the 25th April, 1913, under sec. 12 of the Assignments and Preferences Act, 10 Edw. VII. ch. 64, to set aside an assignment and transfer of goods by the insolvent company to the defendant company.

W. S. McBrayne and W. M. Brandon, for the plaintiff.
H. Howitt, for the defendant company.

FALCONBRIDGE, C.J.K.B.:—On the 7th November, 1912, the Better Fruit Distributors Limited, being then indebted to Karn and to the defendant company, and also to other persons, and being insolvent and unable to pay its debts in full, and not being warehousemen or otherwise entitled to issue warehouse receipts, assumed and purported to transfer and convey to the defendant company 4,500 barrels of apples, then in the premises of the Better Fruit Distributors Limited, at Hamilton, and on the 5th December, 1912, the said company purported further to transfer and convey to the said defendant company 3,000 barrels of apples.

David L. Dick, manager of the defendant company, admits on oath that Mr. Mallinson, president and general manager of the Better Fruit Distributors Limited, must have known that there was a "shortage," i.e., that the latter company was insolvent.

I do not think that, on the whole evidence, I would be justified in finding that Dick knew that the company was insolvent.

And I do not find that the transaction impeached was with intent and design to give the defendant company a preference or privilege over other creditors, or with intent to defeat, hinder, delay, or prejudice other creditors, or that it had that effect.