

for \$1,172.27, payable to his own order, which he took to that bank, where he had an account, and deposited it to his own credit. The defendants knew that the sale was about to be made, and had lent G. the money to make the purchase, and knew that the money was to be deposited in their bank by the insolvent, and, in anticipation of this, had charged up against the insolvent's account (without the latter's knowledge) an overdue note for \$1,000 and \$40 interest thereon. The deposit of G.'s cheque with the defendants was attacked by this action (brought within 60 days thereafter) as a preferential transfer of a bill or security to a creditor, within R.S.O. 1897, c. 147, s. 2.

Held, STREET, J., dissenting, that, there being no evidence of any pre-arrangement nor of any intent to prefer, the transaction was not within the scope of the Act.

Judgment of FALCONBRIDGE, C.J.K.B., affirmed.

Gibbons, K.C., and Blewett, for plaintiffs. T. G. Meredith, K.C., for defendants.

Teetzel, J.]

RE MCNEIL.

[April 4.

*Distribution of estate—Legatee not heard of for seven years—
Presumption of death—Burden of proof.*

A testator, dying in 1895, gave his estate (subject to his wife's life interest) to his brothers and sisters, share and share alike. One brother was living in 1885, but had not been heard of for more than seven years before the death of the testator. There was no evidence that he was in fact dead, nor that he he survived the testator. Letters of administration to his estate were granted in 1903, upon the presumption that he was dead.

Held, that the onus of proof that he survived the testator lay upon those who claimed under him; and, there being no evidence that he survived, the administrator of his estate failed to establish any right to share in the testator's estate; and distribution among the other legatees or their representatives was ordered, subject to their undertaking to refund should it be established hereafter that the absentee or his representative was entitled.

G. E. Taylor, for applicants. Hume Cronyn, for official guardian.