

Paul Levi (who was the principal witness for plaintiff, and who has the strongest interest in setting aside the transaction, inasmuch as he appears, on the statement of affairs of the company, as a creditor for \$7,233 out of a total liability of \$12,306) swears that he was not intending to give the defendants any preference over the other creditors. There was no direct notice to, or absolute knowledge on the part of, defendants of the desperate condition of the company's affairs. The transactions between them had not been more unsatisfactory in 1908 than they were in 1907, and, but for the enormous claim presented by Paul Levi (general manager, president, and principal stockholder), the company would appear to be perfectly solvent; a somewhat eccentric condition of affairs. I therefore hold that the transaction is not affected by the section of the statute, and it will stand.

The 4 pieces of cloth valued at \$50, being the last item in plaintiff's account, were not purchased by defendants and are lying at defendants' place to plaintiff's order. The defendants have given satisfactory proof of their account—the \$3.29 paid into Court balances this account—and the action must be dismissed.

But there was something said about a reference at the opening of the case, and the plaintiff's counsel stated that he was not quite prepared to meet that claim; so that, while I think that there does not seem to be a necessity for any reference or further contestation as to defendants' account, the plaintiff may have a reference as to this, if he should be so advised, at his own risk; otherwise action dismissed with costs.

If plaintiff takes a reference as to defendants' account, costs to date to be payable forthwith by him to defendants, and further directions and subsequent costs reserved until after report.