certain goods. This count was not sustained by the evidence; the goods were removed by defendants under an arrangement entered into between them and Paul Levi, general manager and president of the Standard Cap Co.

The two concerns had had dealings, which were closed up in the end of 1907 by the purchase by defendants from the Standard Cap Co. of certain real estate, the accounts being then balanced. In the early part of 1908 an arrangement was made between them whereby the Standard Cap Co. agreed to hand over to the defendants orders taken by buyers on behalf of the Standard Cap Co. Defendants were to ship the manufactured goods direct to the persons giving the orders, and were to collect the accounts therefor, the usual course of procedure being for the defendants to place in their bank, for collection, drafts on customers drawn by the Standard Cap Co. Levi asserted that the defendants were to take the responsibility of these sales, that is, that they would account for the same to the Standard Cap Co., whether they succeeded in collecting or not. This is denied by defendants, and I find as to this issue in defendants' favour, both on the evidence and on the probabilities of the case. The Standard Cap Co. were getting the same discounts and allowances as they had been doing during the year 1907, with the small and reasonable deduction of 2½ per cent. for shipping direct to customers instead of to the Standard Cap Co., as was done in 1907; there was, therefore, no consideration for the alleged assumption by defendants of responsibility for the accounts. The goods sued for were purchased by the defendants from the Standard Cap Co. under an arrangement which is very little in dispute.

Plaintiff alleges alternatively that the goods were delivered to defendants by the Standard Cap Co. at a time when the company were in an insolvent condition, with intent to give the defendants, and intent on the part of the defendants to obtain, an unjust preference over the other creditors of the company. The transaction was within the 60 days, and therefore it is presumed prima facie to have been made with the intent aforesaid. But I think that this prima facie presumption has been rebutted in this case. To avoid the transaction there must be concurrence of intent on the one side to give, and on the other to accept, a preference over the other creditors: Benallack v. Bank of British North America, 36 S. C. R. 120, and cases cited.