

terms of sale. R. agreed to give F. credit for the amount of the purchase, on contra account, and to hold the stoves subject to the order of F. and to deliver them either at Dartmouth or Halifax free of charge. In September following R. made an assignment under the Assignments Act to the defendant F., the official assignee, for the general benefit of creditors, under which defendant took possession of and sold the stock of R., including a portion of the goods sold to plaintiff.

To an action by F. for the conversion of the goods defendant pleaded (1) that the inventory and receipt given by R. to F. were a bill of sale, and within the provisions of the Bills of Sale Act, R.S. 1900, c. 142, and not having been filed in accordance with the provisions of the Act were void. (2) That R. at the time of the transfer to F. was insolvent and that the transfer was void under the terms of the Assignments Act, R.S. 1900, c. 145.

*Held*, 1. The inventory and receipt operated as an absolute bill of sale; that they were not intended to operate as a security for the debt but as an absolute transfer of the title.

2. As the inventory and receipt enumerated the articles sold and the prices and the terms of sale, they did away with any objection under the Statute of Frauds in respect to absence of part delivery.

3. In the absence of evidence of knowledge on the part of F. that R. was insolvent or unable to meet his liabilities; and in the absence of evidence that R. was as a matter of fact insolvent at the time of the transaction, apart from the fact that the assignment to defendant was made within a month afterwards, the transaction was not one that offended against the terms of the Assignments Act, R.S., c. 145.

4. The provisions of the Act (c. 145, s. 4), which made an assignment for the benefit of creditors within 60 days presumptively given with intent unjustly to prefer, must be read in connection with previous sections requiring insolvency at the date of the transaction to be established, and moreover only raised a presumption which could be rebutted.

5. The conduct of F. in endeavouring at the time to sell other goods to R. and in permitting the goods to remain in his possession was inconsistent with any suspicion on his part that there was a general inability on the part of R. to meet his debts.

6. The word "insolvent" in the Nova Scotia Act was not to be read differently from the word "debtor" in the corresponding section of the Ontario Act.

7. An application on the part of defendant made after the conclusion of the trial for permission to reopen the evidence for the purpose of giving evidence of insolvency should be refused with costs, it being inexpedient to grant such application and there being authority given to the Court on appeal to take further evidence.

*E. P. Allison*, for plaintiff. *F. H. Bell*, for defendant.