

*Held*, also, that though the plaintiffs had no right to convey parts of lots to a defendant, even if merely a surety, was not wholly released by their doing this, and giving time for payment of interest, but that he was released as to interest in arrear when time was given, and was entitled to credit for the full proportion of purchase money of those lots of which parts had been conveyed.

Judgment of ROBERTSON, J., reversed.

*J. K. Kerr, Q.C., and W. Davidson* for the appellants.

*Robinson, Q.C., and N. W. Rowell* for the respondent.

[Jan. 15.]

WOOD *v.* REESOR.

*Action—Election of remedies—Inconsistent remedies—Estoppel—Assignments and preferences.*

A creditor cannot take the benefit of the consideration for a transfer of goods, and at the same time attack the transfer as fraudulent, and an assignee for the benefit of creditors has no higher right in this respect. Where, therefore, a creditor suing in the name of the assignee obtained judgment for the payment to him as part of the debtor's estate of promissory notes given to the latter for, as was alleged, part of the purchase money of his stock-in-trade, it was held that it was then too late for the creditor to attack the sale as fraudulent.

On the argument of the appeal evidence as to the prior action was admitted, and on this evidence and objection then taken the judgment of FERGUSON, J., was set aside without costs here or below.

*Moss, Q.C., and T. M. Higgins* for the appellants.

*Oster, Q.C., and W. S. McBrayne* for the respondents.

HIGH COURT OF JUSTICE.

*Queen's Bench Division.*

Div'l Court.]

[Dec. 19.]

REGINA *v.* CUNERTY.

*Justice of the peace—Summary conviction—Sale of intoxicating liquors—Quantity—R.S.O., c. 194, s. 2, s-s. 3—Finding of magistrate—Power to review—Certiorari.*

The defendant, the holder of a shop license under the Liquor License Act, R.S.O., c. 194, was convicted by a magistrate for selling liquor in less quantity than three half pints, contrary to s. 2, s-s. 3. The evidence showed a sale of a bottle of ale and a flask of brandy, each containing less than three half pints, the two together containing more than three half pints.

Upon appeal from an order refusing a certiorari ;

*Held*, that it was within the jurisdiction of the magistrate to determine, as a matter of fact, whether the defendant had sold liquor in less quantity than