

that the bills of exchange were paid at maturity by them; that for the difference between the \$1,708.50 and the amount of the two bills, the appellants gave their promissory note to the insolvent for \$432, which was paid by cheque of the 4th March, 1918.

The trial Judge held that the transaction was entered into within 60 days of the making of the assignment, and that the appellants had not rebutted the statutory presumption resulting from this, and gave judgment against them for \$1,278.50. He did not credit the testimony of the insolvent or that of Jacobs, the president of the appellant company. He thought that Jacobs had said that suits were taken in lieu of the cloth—in this he was mistaken.

An appellate Court does not, in ordinary circumstances, reverse the finding of a trial Judge as to the credibility of a witness, but where in discrediting a witness he has proceeded upon an erroneous view of what the witness has said, an appellate Court ought to reverse a judgment founded upon that erroneous view. Even if the transaction had been what the learned Judge thought it was—an exchange of the suits for the cloth—it ought not to be set aside without restoring what had been given up by the appellants.

Upon this branch of the case, the ends of justice would be best served by directing a new trial.

The other transaction was this. The appellants purchased from the insolvent on the 27th February, 1918, a number of coats and suits for \$1,000, for which the promissory note of the appellants, payable on the 10th March following, was given. This note was discounted by a bank for the insolvent, and was in the bank's hands unpaid on the 11th March, 1918. Some of the goods purchased were found to be badly made, and were returned to the insolvent, and the appellants were given a credit-note of the 28th February, 1918, for \$535, which was the price at which they had been bought. On the 2nd March, 1918, the insolvent, being in need of money to pay wages, applied to the appellants for assistance, and on that day the appellants lent the insolvent \$450. On the 11th March, 1918, the appellants, hearing that the insolvent was "getting weak," got from him his cheque on the bank for these two sums—\$985; this cheque was presented for payment three times, but was not paid because there were not sufficient funds to meet it. The cheque was marked by the bank as accepted on the 14th March, but there was no evidence as to when it was actually paid. If it was paid on the 14th, it would, no doubt, have been paid during banking hours, and probably before the assignment came to the knowledge of the respondent, and would therefore be protected by sec. 6 (1) of the Assignments and Preferences Act, R.S.O. 1914 ch. 134.