

W. W. Vickers, for the plaintiff.

F. J. Dunbar, for the defendants the Bonner-Worth Company Limited and the executors of M. Rushforth, deceased.

W. J. McWhinney, K.C., for the defendants Edgar Worth and Victor Edelstein & Son Limited.

ROSE, J., in a written judgment, after stating the facts, said that the onus of shewing intent to delay or prejudice the other creditors was, as to the transaction between Stewart and the Bonner-Worth Company, upon the plaintiff; and the plaintiff had failed to satisfy the learned Judge that there was any such intent. Moreover, the transaction was the result of pressure exercised by the defendant Edgar Worth; and, the 60-day presumption having no application, that fact was a perfectly good answer. The first action should be dismissed with costs to the defendants the company and Edgar Worth. The defendant Stewart was not represented at the trial, and was not entitled to costs.

As to the transaction in question in the second action, the learned Judge said, after stating the facts, that it did not relate back to a period more than 60 days before the assignment to the plaintiff; and, if what was done amounted to an assignment or transfer of goods, chattels, effects, or property, it must be presumed *prima facie* to have been made with the intent to give Victor Edelstein & Son Limited an unjust preference, and to be an unjust preference, and so null and void. If the statutory presumption arose, the transaction could not be supported merely by proof of pressure; it would be necessary to decide whether the fact that Stewart did not really want the wool as much as he wanted his money, and was glad to sell his wool at a profit, not because of any desire to benefit the Edelstein company, but simply to benefit himself, displaced the presumption.

It was, however, in the opinion of the learned Judge, not established that there was an assignment or transfer of goods, chattels, effects, or property, and so the statute did not apply, and the point mentioned did not really fall to be decided.

Unless it was found that Stewart owned the wool, what he did was not an assignment or transfer of it, but was at most a release of his right to insist upon the fulfilment of the contract of sale. The claim to recover the value of the wool failed.

There should be judgment for the plaintiff against the defendants Victor Edelstein & Son Limited, without costs, for the \$415.12 admitted to be due. In other respects, the action should be dismissed. The said defendants should have their costs of the issues upon which they succeeded; and Rushforth's executors should have their costs. The defendant Stewart, who was not represented at the trial, and the defendant Thorpe, against whom the pleadings were noted closed, were not entitled to costs.