

ager of the Better Fruit Distributors Limited, must have known that there was a "shortage," i.e., that the Better Fruit Distributors Limited was insolvent.

I do not think that on the whole evidence I would be justified in finding that Dick knew they were insolvent.

And I do not find that the transaction impeached was with intent and design to give defendants a preference or privilege over other creditors, or with intent to defraud, hinder, delay or prejudice other creditors, or that it had that effect.

It was a very common and ordinary arrangement—an advance of money by defendants to the Better Fruit Distributors Limited on apples consigned to defendants for sale, and for the proceeds of which defendants had to account.

In the present instance they made an actual cash advance of \$6,750 plus \$3,750—\$10,500. The apples were bad and there was a deficit on the consignments of \$35.41 besides above advances.

Action dismissed with costs.

Thirty days' stay.

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HON. MR. JUSTICE LATCHFORD.

MARCH 16TH, 1914.

RUSSELL v. KLOEPFER LTD.

6 O. W. N. 102.

*Assignments and Preferences—Mortgage Given by Insolvent for Past Debt—Knowledge of Insolvency—Preference over other Creditors—Assignments and Preferences Act, 10 Edw. VII. c. 64, s. 6—Transaction Set Aside.*

LATCHFORD, J. *held*, that a mortgage given a creditor to secure a past debt, the mortgagee being aware that the mortgagor was in insolvent circumstances, was fraudulent and void as against the other creditors of the mortgagor.

Action to set aside a mortgage made by one Leatherdale to the defendant company, on the ground that it was preferential as against the creditors of Leatherdale, other than the defendant company, and, therefore, fraudulent and void.

J. T. Mulcahy, for plaintiff.

J. F. Boland, for defendants.