

FIRST DIVISIONAL COURT.

JANUARY 31st, 1921.

***ROWLATT v. J. & G. GARMENT MANUFACTURING CO.**

Assignments and Preferences—Action by Assignee for Benefit of Creditors of Trader to Set aside Transactions with one Creditor as Fraudulent—Transfer of Goods within 60 Days before Assignment—Evidence to Rebut Statutory Presumption—Finding of Trial Judge—Mistake as to what Witness Said—Appeal—Reversal of Finding by Appellate Court—Cheque Given by Insolvent to Creditor Shortly before Assignment—Payment of Money—Assignments and Preferences Act, sec. 6 (1)—Bills of Exchange Act, sec. 165—Failure to Shew whether Cheque Paid before Assignment—New Trial—Costs.

Appeal by the defendants from the judgment of LOGIE, J., at the trial, in favour of the plaintiff, in an action by the assignee for the benefit of creditors of M. Silverman, an insolvent, to set aside as fraudulent against creditors or as fraudulent preferences certain transactions between Silverman and the defendants.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

A. J. Thomson, for the appellants.

A. C. McMaster, for the plaintiff, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said that the transactions attacked as fraudulent or as fraudulent preferences were: (1) a transfer by the insolvent to the appellants, in February, 1918, of a number of suits of clothing which, it was alleged, was made without consideration or for much less than their value and in fraud of creditors; (2) a transfer by the insolvent to the appellants, 4 or 5 days before the assignment, of a sum of \$985.50, which, it was alleged, was made in fraud of creditors, and it was also alleged that this sum was given by the insolvent for an accommodation note held by the appellants.

The answer made by the appellants to the first attack was that in November, 1917, the appellants accepted, for the accommodation of the insolvent, two bills of exchange drawn by him on them for \$726.50 and \$552 respectively, and that as security he deposited with them 11 pieces of cloth; that, when the bills were about to fall due, he applied to them for a return of the cloth; that they refused to return it, but said that they could use some "made-up stuff," and that upon receipt of it the cloth would be released; and that he supplied them with "made-up stuff" to the amount of \$1,708.56, and the cloth was then given up to him;