

Hillsborough, }
 Dec., 1899. }

PERKINS, *Assignee*, v. LABRECQUE.

A transfer of chattels made within three months before the commencement of insolvency proceedings, in consideration of the payment of debts for which the vendee was already liable, and outside the ordinary course of business, is voidable by the vendor's assignee in insolvency.

TROVER, for contracts in writing, evidencing conditional sales. Facts found by the court. Before December 18, 1897, the defendant had signed a note with O. Caron & Co., for their benefit, and had receipted for goods which had been attached in an action against them. On that date the note was due, and Caron & Co. sold to the defendant the said contracts, upon consideration of his promise to pay the note and claim. He paid these December 20, 1897. Caron & Co. were adjudged insolvent January 25, 1898, and the plaintiff was appointed assignee. The sale of the contracts was not made in the ordinary course of business.

David W. Perkins, for the plaintiff.

Stone, Pattee & George, for the defendant.

PIKE, J. "The proceedings in insolvency shall dissolve all attachments of the debtor's property made within three months before the beginning thereof, and all . . . sales and transfers . . . which were not made in the ordinary course of business . . . shall be void; and the assignee may recover . . . any property so . . . sold or transferred." P. S., c. 201, s. 26. The only consideration for the sale to the defendant was his promise to pay certain debts of the insolvents for which he was already liable; and since the sale was not made in the ordinary course of business, the assignee is entitled to recover. The defendant having paid nothing into the estate, the question whether in such a case a vendee of personal property would be entitled to a return of the consideration, paid in good faith, does not arise.

Judgment for the plaintiff.

YOUNG, J., did not sit: the others concurred.