the form prescribed in the Act, and having been issued by competent authority, the officer executing the order of the magistrate could justify under it notwithstanding it had been quashed.

Held, also, that the officer having been no party to the proceedings in which the warrant was quashed, and the judgment therein not being a judgment in rem, but inter partes only, he was not estopped thereby from setting up the warrant as a justification.

Appeal allowed with costs.

Orde, for the appellant.

Roscoe, for the respondent.

Nova Scotia.] [March 24.

KIRK *v.* CHISHOLM.

Assignment for benefit of creditors—Preferences—R.S.N.S. 5 ser. c. 92, ss. 4, 5, 10—Chattel mortgage—Statute of Eliz.

Though an assignment contains preferences in favor of certain creditors, yet if it includes, subject to such preferences, a trust in favor of all the assignor's creditors, it is "an assignment for the general benefit of creditors," under sec. 10 of the Nova Scotia Bills of Sale Act (R.S.N.S. 5 ser. c. 92,) and does not require an affidavit of bona fides. *Durkee* v. *Flint*, 19 N.S. Rep. 487, approved and followed. *Archibald* v. *Hubley*, 18 S.C.R. 116, distinguished.

A provision in an assignment for the security and indemnity of makers and indorsers of paper, for accommodation of the debtor, not due does not make it a chattel mortgage under sec. 5 of the Act, the property not being redeemable, and the assignor retaining no interest in it.

An assignment is void under the statute of Eliz. as tending to hinder or delay creditors if it gives a first preference to a firm of which the assignee is a member, and provides for allowance of interest on the claim of said firm until paid, and the assignor is permitted to continue in the same possession and control of the business as he had previously had.

A provision that "the assignee shall only be liable for such moneys as shall come into his hands as such assignee, unless there be gross negligence or fraud on his part," will also avoid the assignment under the statute of Eliz.

Authority to the assignee not only to prefer parties to accommodation paper, but also to pay all "costs, charges and expenses to arise in consequence" of such paper, is a badge of fraud.

Appeal dismissed with costs.

Mellish, for the appellant.

Gregory, for the respondent.

Prince Edward Island.] [Feb. 27.

GORMAN *v.* DIXON.

Principal and surety—Giving time to principal—Reservation of rights against surety.

Gorman, as surety for his brother, was a joint maker with him of a promissory note which was dishonored. The bank holding the note accepted