

interest, fine or penalty not chargeable, payable or recoverable under the three sections next preceding, such sums may be recovered back, or deducted from any other interest, fine or penalty chargeable, payable or recoverable on the principal. 43 V., c. 42, s. 4.

7. Whenever any principal money or interest secured by mortgage on real estate is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then, if, at any time after the expiration of such five years, any person liable to pay or entitled to redeem the mortgage tenders or pays, to the person entitled to receive the money, the amount due for principal money and interest to the time of payment, as calculated under the four sections next preceding, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage. 43 V., c. 42, s. 5.

8. The provisions of the five sections next preceding shall only apply to moneys secured by mortgage on real estate executed after the first day of July, in the year one thousand eight hundred and eighty. 43 V., c. 42, s. 6.

AN ENGLISH DECISION AS TO CHEQUES.

With a view of deciding what writing upon a cheque is needful to make it not negotiable, a suit was brought in England last year. It was appealed, and the decision in appeal sustains the lower court. The case is reported in the *Glasgow Herald* of December 12. An action was brought by the National Bank to recover £450, being the amount of a cheque drawn by one Silke, the defendant, upon the Alliance Bank, of which cheque the plaintiffs were the holders for value. Silke had agreed to advance £450 to a Mr. Moriarty upon certain conditions as to security, and in pursuance of this arrangement gave him the cheque, which was drawn thus—"Pay to the order of J. F. Moriarty, Esq., four hundred and fifty pounds." The cheque was crossed—"Account of J. F. Moriarty, Esquire, National Bank, Dublin." Moriarty cashed the cheque with the defendants, but Silke refused to repay them, saying that Moriarty had not kept his agreement as to security, and that the effect of the words written across the cheque was to prevent even an indorsee for value from obtaining a better title than Moriarty had. The question thus came to be whether the words in question made the cheque non-negotiable.

The Court of Appeal, sustaining the judgment of Mr. James Day, decided in the negative. Lord Justice Lindley said he was not satisfied that a cheque payable to order or bearer could be made not negotiable in any mode except that which was expressly pointed out in section 81 of the Act, i. e., by writing the words "not negotiable" across it; but he thought that those who intended that a cheque drawn to order or to bearer should not be negotiable should say so distinctly and unmistakably. A cheque drawn to order or bearer must not be made a puzzle. The words used in the present case, "Account of J. F. Moriarty," certainly did not prohibit transfer of the cheque. Did they "indicate an intention that it should not be transferable?" His Lordship thought not. The utmost they could mean was a direction to place the amount of the cheque to the credit of the particular person's account. Any other construction would be utterly inconsistent

with the nature of a document which was made payable to order or bearer.

DECISIONS IN COMMERCIAL LAW.

CARR V. CORFIELD.—Fraudulent intention is a material element in an action to set aside a conveyance as being voluntary and fraudulent against creditors, and where it does not exist the action cannot succeed. The fact that the result of a conveyance is to defeat creditors is not necessarily evidence that the intention of the grantor in making it was fraudulent. Where another and a sufficient motive and reason for the conveyance was shown, the action was dismissed.

MARTIN V. McMULLEN.—The plaintiff's testator gave the defendants a guarantee in the following terms: "In consideration of the goods sold by you on credit to M., and of any further goods which you may sell to M. upon credit during the next twelve months from date, I hereby undertake to guarantee you against all loss in respect of such goods so sold or to be sold, provided I shall not be called on in any event to pay a greater amount than \$2,500." The whole debt owing to McMullen by M. at the expiration of the period limited by the guaranty was \$5,556. M. made an assignment for the benefit of his creditors. The plaintiff paid the defendants \$2,500, and claimed to rank upon the estate of M. in respect thereof. Held by Court of Queen's Bench that the guaranty was a limited suretyship for a floating balance, and was to be construed as applicable to a part only of the debt, co-extensive with the amount of the guaranty; and the plaintiff was entitled to a dividend from the estate of M. in respect of the \$2,500 paid.

ONTARIO INVESTMENT ASSOCIATION V. SIPPI.—An action to recover a call upon 49 shares of the capital stock of the O. Association. The defence was that S. transferred his shares to one John Wright absolutely before the call was made. The association did not dispute this, but they contended that there was a statutory call of ten per cent. to be made within a year, and no shares were to be transferred till that was made; that the directors disaffirmed the transfer; and that in any view S. was liable for the ten per cent. statutory call, and that judgment should have been given for that amount. The Court of Queen's Bench held that no call was made which could be called a call under the Act, and that the statutory provision was directory, and the direction not having been complied with, S. could not be said to be in arrear in respect of a call, and therefore could not transfer the shares free from it.

MOODY V. CANADIAN BANK OF COMMERCE.—M. was arrested upon an information under the Larceny Act, for alienating grain covered by warehouse receipts without the consent of the holder of the receipts, and being acquitted upon the charge, he brought an action for damages for malicious prosecution, when the jury awarded him \$8,500. On appeal the Court of Queen's Bench held that there was no reasonable and probable cause for the arrest, that there was evidence of malice, in that the bank was endeavoring by criminal process to force M. into signing a deed, and that the damages awarded by the jury were not excessive in the proper sense, and could not be interfered with, and also that nothing was said by counsel of such an inflammatory

nature as would induce the court to set aside the verdict.

COUSINEAU V. CITY OF LONDON FIRE INSURANCE Co.—The company resisted an action brought by C. upon a policy of fire insurance, on the ground that the action was not brought within six months from the time of the fire, and on other grounds turning upon the circumstances of the application and answers made by C. C. contended that the company had by their conduct waived the benefit of the condition requiring the action to be brought within six months. The Court of Queen's Bench held that C. could not recover because of one of the answers as to insurance held by the mortgagee, given by the plaintiff in the application, which was made part of the contract. They held, however, that the conduct of the company in luring C. over the time for taking action was reprehensible.

THE STATE OF TRADE.

So much depends upon the temperament of a man, his point of view, the district in which one's trade mainly lies, the class of customers one has, that it is never easy to get a dozen, or even half a dozen, wholesale merchants to agree in their experiences of past business or their opinions of future business.

This will suffice to account for the divergence in the views of the Montreal wholesalers who were interviewed by the *Gazette* last week as to the business outlook.

Mr. George Sumner, of Hodgson, Sumner & Co., dry goods importers, expressed the opinion that the prospects for the year's trade were poor. Extreme caution was needed, as the unfavorable crops of last fall had not left matters in a flourishing condition. The stocks on hand, he considered, were generally heavy. Payments were fair, although a number of renewals had to be made. The Christmas trade in portions of the country was reported behind, people buying fewer and a cheaper class of goods.

In the opinion of Mr. John Robertson, of Robertsons, Linton & Co., times are bad, but they are not so bad as they were last year. Payments were, as they usually are at this time of the year, slow, and there were a good many renewals. "I can not foreshadow a good year," said Mr. Robertson, "but I can hope for it."

A more favorable view was taken of the situation by Mr. Cantlie, of J. A. Cantlie & Co., wholesale woollen and cotton merchants. He considered that the prospects for trade were much better than last year. In his experience payments were very good, with few renewals.

The outlook for the spring trade, in the estimation of Mr. R. L. Gault, of Gault Bros. & Co., was very bright, while the last few weeks' trade had proved very satisfactory. The demand for spring goods was very fair. "Payments are," said Mr. Gault, "on the whole, fair. Some renewals were being made, but they were fewer in number than last year."

Mr. H. Archbald, of Frothingham & Workman, wholesale hardware merchants, told the reporter that trade was very quiet, and he considered him a rash man who would undertake to set forth the year's prospects. Payments were fair and in some parts of the country light stocks were being carried.

"The grocery trade will have to pass through its hardest time yet, and it will not be until the 1st of May that I look for any material change in the prospect." Such was the tenor of Mr. A. L. Lookerby's views, who