indebtedness. Unless this is done, the creditor must be taken to have accepted the cheque in payment of the debt, and the debtor is discharged.

Judgment of the First Division Court of Wentworth affirmed.

E. Martin, Q.C., for the appellants.

John Crerar, Q.C., for the respondents.

From STREET, J.] [Jan. 13.

HUNTINGDON *v.* ATTRILL.

Judgment—Foreign judgment--Penalty--Action to enforce.

The Courts of this Province will not indirectly enforce the penal laws of a foreign country by entertaining an action founded on a judgment obtained in that foreign country in a penal action.

The court being divided in opinion as to the penal nature of the judgment in question the appeal was dismissed, and the judgment of STREET, J., 17 O.R. 245, affirmed.

N. Kingsmill and *H. Symons* for the appellant.

McCarthy, Q.C., and *A. R. Creelman*, Q.C., for the respondent.

[Jan. 13.

BLACKLEY *v.* KENNEY (No. 2).

Surety—Extending time—Discharge—Notice of suretyship.

This was an appeal by the plaintiff from the judgment of ROBERTSON, J., reported 19 O.R. 169, and came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 29th of May, 1890.

Aylesworth, Q.C., and *W. Macdonald*, for the appellant.

A. C. Galt for the respondents.

The facts are fully stated in the report of the case below and in the reports of previous appeals to this court, 16 A.R. 272, and 16 A.R. 522.

The court allowed the appeal with costs upon the ground (not taken in the court below) that as there was no evidence whatever of the plaintiff's knowledge of the covenant under which the alleged suretyship arose, and as he had no reason to think that the relation of principal and surety existed, his dealings with the debtor did not work a release, assuming that that relationship did exist.

From STREET, J.] [Jan. 13.

GIBBONS *v.* MCDONALD.

Assignments and preferences—Bankruptcy and insolvency—R.S.O. (1887), c. 124, s. 2.

A security for a pre-existing debt, given when the debtor is in insolvent circumstances, cannot be impeached, though working a preference, if it has been taken in good faith and without knowledge of the insolvency.

Johnson v. *Hope*, 17 A.R. 10, and *Molsons Bank* v. *Halter*, 16 A.R. 323, and in the Supreme Court (not yet reported) considered.

Judgment of STREET, J., 19 O.R. 290, affirmed.

Moss, Q.C., and *Hayes*, for the appellant.

Lash, Q.C., and *Mabee*, for the respondent.

From Chy.D.] [Jan. 13.

SIBBALD *v.* GRAND TRUNK RAILWAY CO.

TREMAYNE *v.* GRAND TRUNK RAILWAY CO.

Railways—Level Crossings—Defect in construction—Trespassers — Negligence—Damages—New trial.

Where a railway company in constructing their railway cross an existing highway in a diagonal direction, leaving the road-bed of the line some feet below the level of the highway, they exceed their statutory powers, and are liable to indictment. They are therefore trespassers *ab initio* and chargeable with all injuries resulting even indirectly in consequence of the dangerous condition of the highway to those lawfully using it, and this liability attaches to a company operating the line who have not themselves been concerned in the original improper construction.

Rosenberger v. *Grand Trunk R. W. Co.*, 8 A.R. 482, 9 S.C.R. 311, considered.

Judgment of the Chancery Division, 19 O.R. 164, affirmed, BURTON, J.A., dissenting.

McCarthy, Q.C., and *W. Nesbitt*, for the appellants.

Shepley, Q.C., and *S. W. Burns*, for the respondents.

From County Court, York] [Jan. 13

RADFORD *v.* MACDONALD.

Evidence—Executor and administrator—Corroboration—R.S.O. (1887), c. 61, s. 10.

To enable an opposite or interested party to recover in an action against the estate of a