Scott's account is that he was always led to believe that McGillivray would pay his debts in full, and that he had a promise from McGillivray that he would pay the old debt when he sold his stock. He heard, about the time of sale, that Scott was going to sell, and he provided funds to another customer, one Grant, to enable him to purchase. Scott says that he expected when McGillivray got the proceeds of sale he would deposit them with his bank in the usual way. Anticipating this, he directed the note to be charged up in McGillivray's account as of 3rd September, but of this McGillivray was not aware, and when the deposit was made and carried to McGillivray's credit on 5th or 6th September, the effect was to retire the old note which had been debited to the account. Afterwards to confirm and evidence the transaction according to the custom of the bank, McGillivray gave his own cheque for the amount of the note to the bank, and got back his note as paid.

There is no evidence of any pre-arrangement which conduced to this result, and McGillivray is vouched as being an honest man by the opposing counsel.

It appears to me (though the question is one of nicety), that the transaction is not within the scope or the language of the Act. Suppose McGillivray had carried out his intention of paying Scott out of the proceeds of sale; he might have insisted on Grant paying cash—which he had at the bank—and out of this money he could have taken up the note. That would be a valid payment in money, which is excepted from the operation of the Act: Campbell v. Roche, 18 A. R. 646, and especially by Osler, J.A., at pp. 655-6. This case was affirmed by the Supreme Court, 21 S. C. R. 646. However, that was not done, but, instead of that course, he did, as was expected by Scott, but not pre-arranged, deposit the proceeds of the sale, as represented by Grant's cheque, to his own credit in Scott's bank. That, I take it on the evidence, was in the ordinary course of business; it was not, in the language of R. S. O. 1897 ch. 147, sec. 2, sub-secs. 1 and 2, "a transfer or delivery over of the security" (i.e., cheque) "to or for a creditor." There was no transfer of anything to his creditor at that juncture by the insolvent; there was simply a deposit made by him in his usual banking place, with a banker who also happened to be his creditor. This, which is the turning point of the controversy, is a dealing not touched by the provisions of the statute. The