where an insolvent debtor makes sale or mortgage of his property for the purpose of using the purchase money or mortgage money, to prefer certain of his creditors (other than the purchaser or mortgagee), the sale or mortgage cannot be successfully attacked under the Statute, even though the purchaser or mortgagee knew of the debtor's intent to effect such preference: *Johnson* v. *Hope*, 17 App. R. 10; *Campbell* v. *Roche*, 18 App. R. 646; 21 S. C. R. 645; *Burns* v. *Wilson*, 28 S. C. R. at p. 216.

In *Campbell* v. *Roche* (18 App. R. at pp. 654-5-6), Mr. Justice Osler, says: "The fact that a debtor is insolvent, or on the eve of insolvency, does not affect his power to borrow money on the security of his property, and to give a valid security therefor, even though the lender may know, or have reason to know the state of his affairs, provided always that the latter is ignorant of any intention on the part of the former to contravene the provisions of the Statute, for then the security is taken for a present actual *bonâ fide* advance in money * * *. As the Act has not forbidden the preference of a creditor by the payment of his debt in money, a security given by a debtor for money lent for that purpose, is not invalidated by the Act * * *. The Legislature has chosen to except from the operation of the Act, 'any payment of money to a creditor,' and I do not think we should be justified in interpolating the expression '*bonâ fide*' in that clause, in order to infer that if the creditor had notice that the debtor was in a state of insolvency when he made it; it was a payment *mala fide* and forbidden by the Act."

It is not necessary, in order to bring a case within the protection of section 3 (1) of the Act, that the money should have come into the manual possession of the debtor and have been paid over by him to the creditor; it will be sufficient if the debtor raises the money by mortgaging his property to some third person, and such third person, under the direction of the debtor, pays the money to the creditor: *Gibbons* v. *Wilson*, 17 App. R. 1; *Johnson* v. *Hope*, 17 App. R. 10.

If, however, the circumstances shew that the *scheme was devised by the mortgagee or purchaser or his agent*, for the purpose of evading the provisions of the Statute, the payment will not be treated as a *bonâ fide* advance or payment of money within the meaning of the statutory exception: *Burns* v. *Wilson*, 28 S. C. R. 207.

Endorsing and giving to a creditor the unaccepted cheque of a third person in the debtor's favour is not a payment of money to the creditor by the debtor within the meaning of section 3 (1): *Davidson* v. *Fraser*, 23 App. R. 439; 28 S. C. R. 272.