until the grantor finds himself in insolvent circumstances.

Also, the fact of insolvency having been established, the presumption is against the bona fides of such a bill of sale, and must be rebutted by the party claiming thereunder.

McCurdy v. Grant, 32/520.

21. **Criminal Code, s. 368—Fraudulent assignment—Connivance of assignee.**]—Defendant, who had been legal adviser to C. & Co., and was their assignee under an assignment for the benefit of creditors containing preferences, was convicted under Code s. 368 for receiving among the assets of C. & Co. a certain boiler and engine, with the knowledge that C. & Co. had, before making the assignment, promised to give the makers thereof a lien for a balance of the purchase price.

On a case reserved:—Held, per Townshend, J. (McDonald, C.J., concurring, Ritchie, J., dubitante), "There is nothing in our law to prevent a debtor from assigning all his property to a trustee for the benefit of his creditors, even though he make such preferences as will practically cut out all but those preferred from getting any benefit. It may be fraudulent and void under the Statute of Elizabeth, and yet not amount to the offence created by this section. I do not think on such evidence even C. & Co. could be rightly convicted. It evidently contemplates such an abstraction, or doing away with property, as, if carried out, would completely rob the creditors, or any of them, of any benefit whatever. At least, I think we should so construe a statute, making that an offence which borders so closely upon civil rights and remedies. It is pehaps somewhat difficult to draw the line precisely—to say exactly where, and under what circumstances, fraudulent dealing with property becomes an offence under this statute, but I feel justified in arriving at this conclusion, that an assignment to a trustee, even with preferences, where the property has been handed over to the trustee in accordance therewith, is not a violation of it, even if made by the debtor in breach of prior agreements to prefer other creditors."

(Note.—Decided April 14th, 1895).

Per Henry, J., Graham, E.J., concurring, that the conviction was bad as based on the promise to give security, and no mere non-performance or breach of a promise constitutes a fraud.

Also, becoming a party to a breach of the Statute of Elizabeth, creates liability under Code 368.

Quaere, might not the complaining creditor have followed his right to a lien against the assignee; or might he have succeeded in an action to have the assignment set aside as fraudulent under the Statute of Elizabeth?

Queen v. Shaw, 31/534.

22. **Construction of assignment—Fraud of bank agent and assignee—Preference.**]—K. was agent of plaintiff bank and procured from defendant accommodation paper, representing that it was to be indorsed by him and discounted with plaintiff bank for his own use. It was so discounted, in violation of his instructions, but was not indorsed by him.

Before the paper became due he became insolvent and assigned to defendant. It was expressly agreed between defendant and plaintiff bank, that if plaintiff bank consented to look to the insolvent estate for settlement of the accommodation paper, it should take first preference "for all debts due and owing or accruing due or owing by the assignor," the defendant second. The assignment was drawn accordingly. The insolvent estate proving insufficient to discharge the bank's whole claim, it sought to hold the solvent defendant as maker of the paper, claiming a right to disavow the fraudulent act of its agent in discounting the paper, as not creating a debt from him to it. The defendant contended that the debt was in fact a debt of assignor which could only be recovered under the first preference clause of the assignment:—Held (Townshend, J., dissenting), that the debt was one due by the assignor, provided for by the first preference, and that the defendant was not liable.

Merchants Bank of Halifax v. Whidden, 22/200, 19 S.C.C. 53.