creditors or any one of them. It is proposed to discard the present basis where intent to prefer is the test, and all jurisprudence based thereon during the years since the statute was first enacted.

It will be recalled that in the Act of 1919, chapter 36, section 31(1), an alternative test of voidability was expressed in the words "or which has the effect of giving such creditor preference over the other creditors". In 1920, however, Parliament saw fit to transfer these words to the prima facie presumption provision in subsection 2 of the section. Such a presumption can be rebutted by evidence to the contrary.

In the proposed Bill the words "advantage or benefit" are added, making the test so broad that it would be difficult to imagine any transaction which would not result in one creditor obtaining some advantage or some benefit over the others or any one of them. As already stated in another connection, this could have serious results with respect to security validly given to a bank pursuant to the provisions of the Bank Act in consequence of a promise given by the creditor to the bank to give that security when required.

A decision under the present Act that the transfer by a bank of a credit from one account of a customer to an account in which there was a debit balance was not a conveyance, transfer or payment within the section might be held inapplicable under the proposed Act and might even be held to constitute a transaction which resulted in the bank obtaining a benefit over any one of the other creditors and be declared void. Such a decision might have a serious effect on ordinary banking procedure recognized by law under which a bank is entitled to consolidate its customer's accounts.

Under the present statute it has been held that payment of amounts due in the ordinary course of business would not be regarded as done with a view to prefer. The proposed revision would do away with that legislation and might be held to invalidate payments in the ordinary course by a customer to his bank of his obligations as they mature. It has also been held that a payment to a secured creditor was not within the provision but the new legislation might throw doubt upon the validity of such payments.

Section 68 (2)—Application of Provincial Enactments

It is probably not the intention that this provision would enable a trustee in bankruptcy, say in the Province of Quebec, to invoke any law of any other province in order to invalidate a transaction by a creditor in that province, yet the language is broad enough to permit the law of any other part of Canada to be invoked without regard to the locality of the debtor or of the property affected.

Some limitation should be added to the provision so the only provincial laws which could be invoked would be those of the province in which the bankruptcy took place, or in which assets of the bankrupt were situated at the time of the bankruptcy, or the province in which a transaction took place affecting property of the bankrupt.

A further question arises from this provision, namely whether it would have the effect of reviving certain provincial legislation relating to assignments and preferences which had been held valid prior to the enactment of bankruptcy legislation by Parliament but which since the passing of the Bankruptcy Act in 1919 has been deemed to be suspended.

Section 68 (3)—"secret transactions deemed unlawful"

It might be well to clarify the words "other person" in line 2 by the phrase "knowing him to be a bankrupt", in order to protect innocent transactions. In view also of the specific inclusion in section 68 (4) of the words "after the bankruptcy of any person", to have them inserted in line 1, subsection 3. Otherwise their omission from the one and inclusion in the other might give