with intent to prefer only; and any conveyance or transfer by an insolvent (with the exceptions specially mentioned in section 3) which has the effect of defeating, delaying, prejudicing, or preferring creditors, whatever may have been the intent with which it is made, is within the statute.

Judgment of MACMAHON, J., affirmed on other grounds.

W. H. Boulby for the appellants.

W. Nesbitt and *A. W. Aytoun-Finlay* for the respondents.

LINTON *v.* THE IMPERIAL HOTEL CO.

Landlord and tenant—Lease with proviso for determination in case of assignment for creditors—Right reserved to distrain after such assignment—Amount for which distress may be made. 50 *Vict., cap.* 23, *(O.)*

B., by lease dated 28th November, 1887, was lessee of certain premises at a yearly rental of $370, payable quarterly in advance, the lease containing a provision that if the lessee should make any assignment for the benefit of his creditors, the then current year's rent should immediately become due and payable, and might be distrained for, but that in other respects the term should immediately become forfeited and at an end. It was also agreed that the Act, 50 Vict., cap. 23, should not apply to the lease. B. paid $100 on account of rent on the 7th July, 1888, and on the 16th July, 1888, made an assignment to the plaintiff for the benefit of his creditors, and the plaintiff went into possession of the premises. On the 24th July, 1888, the defendants distrained, and were paid $270 by the plaintiff as assignee.

Held, that the lease did not become void, because of the assignment, but only voidable, that the right to claim the accelerated rent depended not upon the lessor's election to forfeit the term, but upon the fact of the lessee having made an assignment for the benefit of his creditors; that the clause was divisible and that the lessors might distrain for the rent as they had not elected to forfeit the term, the distress itself not being such an election to forfeit.

Judgment of the County Court of Wentworth varied.

W. Nesbitt and *W. M. Douglas* for the appellant.

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

BLACKLEY *v.* MCCABE.

Negotiable instrument—Cheque—Presentment—Accord and Satisfaction.

On the 26th June P. and M. exchanged cheques for the sum of $575, for the accommodation of P., the cheque of P. being drawn on a bank in Hamilton, and the cheque of M. being drawn on F. and L., private bankers in Toronto. It was agreed that the former cheque should not be presented before the 1st July, and it was alleged by P., but denied by M., that a similar restriction applied to the latter cheque. F. and L. suspended payment and closed their doors about noon on the 27th of June, having a large balance in their hands at the credit of M. His cheque was never presented for payment. M. on the 27th of June issued a writ against F. and L. to recover the balance in their hands, the amount of the cheque being included. The cheque of P. was presented and paid.

Held, assuming that there was no agreement to postpone presentment, P. had the whole of the 27th June to present M.'s cheque, and that although the suspension of the bankers would not in itself excuse non-presentment, yet this suspension and the bringing of the action by M., which operated as a countermand of payment, would; and that therefore M. became immediately liable to P. on his cheque.

Some time after the suspension of F. and L. and after some negotiations between P. and M. as to payment of M.'s cheque, P. signed a memorandum drawn up by M. in the following form: "Please take judgment when you think best against F. and L.—to include the amount of your cheque for $575 to me—upon the understanding that the same is to be paid me out of the first proceeds of such judgment. You are to exercise your best discretion in the matter."

M. then went on with his action and entered judgment, but nothing was recovered.

Held, that this memorandum did not necessarily import an abandonment of P.'s claim upon the cheque, and the acceptance of a new and substituted mode of obtaining payment,