

that the former is not within the prohibition of the statute is established in our courts beyond all controversy.

Upon the whole, therefore, after a careful perusal of both judgments, I must say that that of the Superior Court is, in my opinion, based upon much sounder reasoning, and is more reconcilable with the English authorities than is that of the Court of Appeals, and I think it a sound rule to lay down as governing all cases like the present that an assignment of property by an insolvent debtor can never be declared void under the statute in question here, if in the opinion of the tribunal for determining matters of fact in each case, the actual intent of the debtor, as a matter of fact, in executing the deed was, as the jury must be taken to have found that fact in this case, to provide for the payment and satisfaction of the creditors of the debtor rateably and proportionably without preference or priority according to the amount of their respective claims; and, in my opinion, the mere fact that the deed contains a clause authorising the trustee in his discretion to sell the property assigned or any part of it, on credit, if such a mode of selling it should seem reasonable or proper and in the interest of the creditors, does not justify as a conclusion of law an adjudication that the grantor's intent in executing the deed was not to provide for such payment, but on the contrary, in violation of the provisions of the statute in that behalf, was to defeat and delay his creditors.

THE CASE OF MR. BUNTIN.

On p. 228 we gave the observations of Mr. Dugas, Police Magistrate, when committing Mr. Buntin for trial. The Grand Jury having found a true bill, the trial took place during the November Term of the Court of Queen's Bench, and the defendant was convicted. There being no Case Reserved, and the motion in arrest of judgment being overruled, Mr. Justice Monk (Dec. 2) passed sentence as follows:—

Mr. Buntin,—It is useless for me to attempt, nor do I wish, to disguise from you my regret that it now becomes my duty to pronounce upon you the sentence of the law in pursuance of the verdict finding you guilty

of the charge brought against you. The accusation was that you, in concurrence with Mr. Craig, president of the Exchange bank, yourself being then a director of the bank, secured and received an undue preference over other creditors to the extent of \$8,000. You were a large creditor of the bank, and the amount thus withdrawn was only a part of the deposit then standing at your credit. At this time the bank had suspended payment and was in a state of insolvency. In thus acting you become involved in the commission of an illegal act. Upon this point the statute is clear and precise, and the facts proved were undeniable and in truth could not be denied. You were ably defended and you had a fair trial. The verdict of the jury was sustained in law by the rulings of the court, and the result was and is that you stand convicted of having violated the law, and thereby you have subjected yourself to the penalties of a misdemeanour. For this offence the statute inflicts a sentence of imprisonment in jail for any period less than two years, at the discretion of the court. It may be proper to remark that you, being a man of wealth, returned the money with interest so soon as you became convinced that you had committed an illegal act. The creditors of the bank did not lose one dollar by this undue preference. But in the opinion of the jury the law had been transgressed; no compromise was proved, and, in law, was not possible. There are, however, many circumstances attending your case which incline the court to exercise the utmost leniency compatible with a reasonable application and a rather mild vindication of the law. Had it been in my power to impose only a fine possibly I might have considered myself justified in doing so. It may perhaps be thought that your case is one of considerable hardship, but even so the sentence of the law is inevitable; and, on the other hand, it will probably occur to you that you acted with great rashness and want of reflection in doing what you did. I do not deem it necessary to add another word except to say that after a careful consideration of all the incidents of your particular case as disclosed by the evidence, the court would rather err on the side of clemency than on that of harsh-