further in upholding the efficacy of pressure. In a case decided in 1858, Romilly, M. R, laid down the rule as follows:

"If the creditor, although he knows that the debtor is insolvent, presses and insists upon having a security for his debt, and the debtor yield to that pressure, and give the security, although it may be well known to both at the same time, that the effect will be to give that particular creditor an advantage over the other cre tors of the insolvent, the transaction is perfectly good and valid." *Johnson* v. *Fesenmeyer*, 25 Beav. 88.

Speaking with reference to the English Bankruptcy Act of 1869, Vice-Chancellor Malins, considered the law to be perfectly settled that, if there was a bona fide negotiation for security, and the security was given on the very eve of bankruptcy, and the person taking the security knew the debtor was hopelessly insolvent, the transaction is valid, everything being dependent upon the bona fides of the transaction. (*b*)

16. **Pressure to obtain performance of existing contract**—It is well settled that, "if there be a precedent duty, either by contract or otherwise, to make an assignment or return of the specific goods to the creditor, such an assignment or return can never be construed as a fraudulent preference." (*a*) The reason of this doctrine is that, like pressure, the antecedent obligation negatives the voluntary character of the act of giving the transfer, by referring it to the fulfilment of the obligation. (*b*)

A fortiori a payment cannot be impeached, where it is made not

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(*b*) *Smith* v. *Pilgrim* (1876) 2 Ch. D. 580. [As a matter of fact the creditor did not know of the debtor's insolvency in this case.] To the same effect see *Ex parte Boyd* (1889) 6 Morrell's Bankr. Cas. 209 (Mellish, L. J.) In *Segsworth* v. *Meriden, &c., Co.* (1883) 3 Ont. Rep. 413, the court seems to be of the opinion that there is a material difference between knowing and merely having the means of knowing that the debtor was insolvent. But this cannot be a correct doctrine if we are to infer that the means of knowledge were such as the creditor was bound, as a prudent business man, to avail himself of. Under the Manitoba Assignment Act, the doctrine is that, as it leaves the doctrine of pressure untouched it is immaterial whether the creditor had or had not notice of the debtor's insolvency. *Stephens* v. *McArthur* (1891) 19 S.C.R. 446. In view of the express terms of sec. 8 of the Dominion Insolvent Act of 1864 (see 31 post) it may possibly be inferred that pressure will not validate a conveyance within its purview if the creditor was aware that the debtor was insolvent. See *Payne* v. *Hendry* (1873) 20 Grant Ch. 142.

(*a*) *Griffith* v. *Holmes*, Bankruptcy p. 431, quoted with approval in *Patterson* v. *Kingsley* (1878) 25 Grant 425.

(*b*) Patterson, J. A., in *Brayley* v. *Ellis* (1884) 9 Ont. App. 565, (p. 594). See also *Bills* v. *Smith* (1865) 6 B. & S. 314: *Toovey* v. *Milne* (1819) 2 B & Ald. 683: Also *Edwards* v. *Glyn* (1859) 2 El. & El. 29 (per Erle J.), the facts of which are stated in sec. 23, post.