tion of good faith on the part of Mr. Buntin at the time he was so paid. I may here say that I do not believe that it is within the scope of the magistrate presiding at a preliminary investigation to take into consideration the more or less good faith which the perpetrator of an offence may be presumed to have had at the time he committed it. Those are facts for the jury to appreciate, as it is for the judge, passing sentence, to consider any other act of a guilty party which may tend to mitigate his offence,—as in this instance, for example, the refunding of the money. I have permitted this proof to be made, as it establishes facts to a certain extent connected with the case, and on account of the large latitude which is always given to an accused party to put himself in the best light possible before the courts and the public. But, as I have said, I cannot here enter into the consideration of those facts, the only question for me being to find whether section 61 of the act above stated has been violated.

It has been argued on the part of the defence that the fact of a suspension of payment did not constitute the Exchange Bank insolvent, as according to section 57 of the Banks and Banking Act such a suspension of payment must be continued during 90 days in order to submit it to the operation of the law in that behalf. That therefore, as by sections 134 of the Insolvent Act of 1875 and 75 of the Act concerning insolvent banks, it is declared in about the same terms, that every payment made by a person or company unable to fulfil its engagements, within 30 days next preceding the insolvency, to a person knowing or having probable cause to know such inability to exist is void, etc. From which it is inferred that the payment to Mr. Buntin of his two cheques before the 30 days preceding the insolvency of the bank was legal, and that therefore he cannot be accused of having violated section 61.

If I understand well the spirit of those two sections they do not go further than to make absolutely void payments made under such circumstances. Surely they do not annihilate the general principle founded upon simple justice and equity, which has always given redress against a wrong-doer. That for the purpose of preventing lawsuits and giving to trade the steadiness it requires, such a limitation should exist in the statutes, this can be easily understood. But the interpretation to be given to those dispositions of the law, which are a derogation to the common law, should be limited to its narrowest sense. And therefore when to the knowledge of insolvency, or to its intimation, are to be added facts which justice, law or equity reprove, I believe that there can be no doubt that the general rule can be still applied.

"Although the period of thirty days before insolvency, etc., is given," says Mr. Wotherspoon in his book on the Insolvent Act of 1875, "in this section as the time in which a payment made by a debtor unable to meet his engagements to a person cognizant thereof, would be void, there can be little doubt that, under the English authorities, *preferential payments* made before that time may be held void as being against the spirit of and a fraud upon the act. It has been held that if a party voluntarily make a payment by which the equal distribution of his property in bankruptcy will be defeated, such payment is a fraudulent preference. (See *Marshall* v. *Lamb*, 5 Q.B. 115, 7 Jur. 850.) And I believe this is the only true and sound doctrine. It protects all creditors alike and disapproves preferences, more so when it appears that both creditor and debtor did combine together for that purpose.

In this instance, it must be remembered that Mr. Buntin was at the same time a director and creditor of the bank. That as such director he had access to the books and was in a better position than any outsider to know the exact standing of the assets and liabilities of the bank; that it was his duty conjointly with his colleagues to see to its good management; that if he did not know the financial condition of the bank he at all events had been named on the board to know it, and no one but himself could be blamed if he did not take the means therefor. And if it is true as Mr. Campbell, one of the liquidators, mentions, (and there is no reason to say that it is not) that the bank had been insolvent for a long time previous to the 15th of September, he as such director should have had a knowledge of it; if not, he surely had a sufficient