

section of the English Act this word is omitted. The spirit of the Acts is brought pretty well into agreement. But for the authorities, I should have thought there was a great deal in the argument, that looking at the general object of the Insolvent Act, namely, the having a ratable distribution of the funds of the debtor, any preference was "unjust" which frustrated this object. The construction of the Queensland Insolvent Act was brought into question in *The Bank of Australasia v. Harris* (a), and it was further considered in *Nurres v. Carter* (b). In the latter case Lord Westbury says: "The conditions of the avoidance of a transfer in that Act were, therefore, two: one, that it should be made within a certain period of time before the insolvency; the other, conjointly, that it should have the effect of giving a preference to one creditor over the others; and it was held, in the judicial interpretation of the Act, that the preference must be fraudulent,—a fraudulent preference is well known to the bankrupt law. It arises where the debtor, in contemplation of bankruptcy,—that is, knowing his circumstances to be such as that bankruptcy must be, or will be the probable result, though it may not be the inevitable result,—does, *ex mero motu*, make a payment of money or a delivery of property to a creditor, not in the ordinary course of business, and without any pressure or demand on the part of the creditor." In the present case, in the Court below it was found that there was pressure exercised in order to the obtaining of the assets assigned to the defendant. The evidence can be so read as to support this view, and the Appellate Court cannot, in such a state of facts, reverse the conclusion thus arrived at. Pressure being established, under the authorities, the plaintiff's case fails, and the decree made must be affirmed with costs.

1875.

Keays
v.
Brown.

Judgment.

PROUDFOOT, V. C.—*Kenzie & Co.*, when they assigned the debts to the defendant, did not do so in contempla-

(a) 15 Moo. P. C. 97.

(b) L. R. 1 Pr. Co. 342.