

creditor spontaneously, and without any pressure on his part to obtain it." (a)

30. English Bankruptcy Acts of 1869, sec. 92, and 1883, sec. 43: Irish Act of 1872, sec. 53 (all practically identical)—These statutes, besides re-enacting in sec. 2 (a) provisions of the earlier statutes defining acts of bankruptcy, introduced the entirely new provision that all conveyances, payments, &c., made within a period of three months before bankruptcy, if made "with a view to giving the creditor a preference over other creditors should be deemed fraudulent and void as against the trustee appointed under the Statute."

The bearing of this statute upon one of the two ingredients of a fraudulent preference as defined by Lord Mansfield (sec. 1 *ante*) is sufficiently obvious. It altered the old rule as to contemplation of bankruptcy into a rule which exposed the payment to be impeached for a period so long as three months. (b) So also it was soon decided that the saving clause in favour of purchasers, &c., in good faith had changed the old law to the extent that the persons therein designated are entitled to retain the money or property transferred, even though the transfer was made without any pressure. (c) But as regards the effect of the clause in relation to the other of those ingredients the views of judges exhibit not a little vacillation and inconsistency (d) and even now it can scarcely be said that the law has been restored to anything like the same precision which it had attained before the legislature intervened.

Soon after the Act came into force, it was laid down categorically, that so far as the matter of voluntariness is concerned the statute

(a) *Ansell v. Bean* (1871) 8 Bing. 87 per Tindal, C.J. (p. 91). (In this case the application of pressure by the creditor was held to negative the theory that the conveyance was voluntary in the second of these senses.) Other cases decided with special reference to this statute are the following: *Boydell v. Gillett* (1835) 2 Cr. M. & R. 579; *Troup v. Brooks* (1830) 4 C. & P. 320; *Reynard v. Robinson* (1833) 9 Bing. 717; *Mogg v. Baker* (1838) 4 M. & W. 348; *Van Casteel v. Booker* (1848) 2 Exch. 691.

(a) In regard to the effect of this section the following remark of James, L.J. may be quoted: "A mere voluntary transfer, impeachable only on the ground that it is a preference of a particular creditor, has never been held to be in itself a fraud, or an act of bankruptcy. It may be impeached on the ground that it is voluntary, but it is impossible to hold that a mere voluntary transfer is of itself an act of fraud." *Ex parte Stubbins* (1881) 17 Ch. D. 58 (p. 68).

(b) *Butcher v. Stead* (1875) L.R. 7 H.L. 839, per Ld. Cairns (p. 847).

(c) *Butcher v. Stead* (1875) L.R. 7 H.L. 839, per Ld. Cairns (p. 846).

(d) The clause is justly described by an Irish judge as a "singularly constructed" one. In *re Boyd* (1883) 15 L.R. Ir. 521 (p. 558).