

Statements of the doctrine that a bare application by the creditor amounts to pressure which validates a payment or transfer are often accompanied by expressions negating the necessity of proving that the debtor was in fear of an action. (e)

A fortiori will a bona fide demand validate an assignment, though not followed by the actual inception of legal proceeding. (f) Or, to express the rule in terms still more general, pressure may exist without the use of "any urgency of a disagreeable nature." (g)

As the greater includes the less, it follows that a transfer must be valid where the creditor, although he says nothing explicitly as to resorting to legal remedies, makes his application in such terms or under such circumstances that the debtor is justified in believing that an action will sooner or later be brought against him. (h)

Pressure may also be predicated of a case in which the debtor will be placed in an exceptionally embarrassing position if he does not comply with the creditor's demand. Thus a payment to an attorney is not "voluntary" within the meaning of 7 Geo. 4, c. 57, sec. 3, where, being asked to defend two actions against the debtor, he said he would not go on without money. (i) So the desire of the debtor to keep the business going in the expectation that something may turn up which may extricate him from his embarrassments is recognized as a motive which, if its existence is established, will rebut the inference of fraud. (j) A fortiori will a conveyance be valid where the pressing creditor was in a position to hamper the debtor's business seriously, if his request had been denied, as where he refused to give up property stored in his warehouse by the debtor, if his claim was not satisfied, and the immediate possession of the property was of vital importance to the debtor. Under such

(e) *Stephens v. McArthur* (1891) 19 S.C. 446. See also *Cosser v. Gough*, cited in note to *Thompson v. Freeman* (1786) 1 T.R. 155 (p. 156); *Smith v. Payne* (1795) 6 T.R. 152; *Strachan v. Barton* (1856) 11 Exch. 647; *Mogg v. Baker* (1838) 4 M. & W. 348. Contra, see *Doll v. Hart* (1890) 2 B.C. 32, but clearly erroneously.

(f) *Ex parte Scudamore* (1796) 3 Ves. Jun. 85. S.P., *Green v. Bradfield* (1844) 1 C. & K. 449.

(g) *Strachan v. Barton* (1856) 11 Exch. 647, per Alderson B. (p. 651); *McWhirter v. Thorne* (1869) 19 U.C.C.P. 303; *Van Casteel v. Booker* (1848) 2 Exch. 691.

(h) *Ex parte Craven* (1870) L.R. 10 Eq. 648; *Johnson v. Fesenmeyer* (1858) 25 Beav. 88; (1858) *Brown v. Jowett* (1895) 3 B.C. 44; *Beattie v. Wenger* (1897) 24 Ont. App. 72; *Reed v. Ayrton* (1817) Holt 503.

(i) *Troup v. Brooks* (1830) 4 C. & P. 320.

(j) See Ld. Blackburn in *Tomkins v. Saffery* (1877) 3 A.C. 213 (p. 235).