where the debtor is not placed in a better situation by yielding to the threats. (*c*) So where the evidence is that numerous and pressing applications for payment had been made by the preferred creditor before the payments impugned, a verdict for the plaintiff [the assignee in bankruptcy] will not be set aside on the ground of misdirection, in that the trial judge charged that, "notwithstanding there had been pressure and importunity on the part of the defendant, the question they had to consider was, whether the payments were made in consequence of that pressure and importunity or whether they were voluntary, and with a view to give a fraudulent preference to the defendant over other creditors." (*d*)

Of course this principle is still more readily applied under a statute like the English Bankruptcy Act of 1869, since if it appears as a matter of evidence that the transfer was actually made "with a view of" preferring a creditor, it cannot be said that the efficient cause of the transfer was the creditor's demand. (*e*) Hence a finding by a jury that the creditor did not make the payment impeached with a view to give the payee a preference over the other creditors is conclusive as to his right to retain the money, although there is another finding that the payment was "voluntary and without real pressure. (*f*)

11 **Absence of pressure not conclusive evidence of fraud**—"In the great majority of cases, the question of fraudulent preference would be determined by the fact of the payment having been made spontaneously by the debtor without pressure on the part of the creditor. Unexplained, a payment so made would carry with it the presumption that the intention of the debtor was to act in fraud of the bankrupt law. . . . But it by no means follows that, because, in the majority of cases, the absence of pressure by the creditor may properly lead to the inference that the debtor

(*c*) *Cook* v. *Rogers* (1831) 7 Bing. 438, following on this point *Thornton* v. *Hargreaves* (1806) 7 East 544, where the debtor gave a bill of sale of the whole of his stock, and was consequently obliged to break up his business immediately afterwards. (See sec. IV, post.)

(*d*) *Cook* v. *Pritchard* (1843) 5 M. & G. 329. The party to object to the judge's assumption of the fact that pressure was applied in such a case would be the plaintiff not the defendant, for the assumption is in favor of the latter. Ibid.

(*e*) See *Ex parte Boon* (1879) 41 L.T.N.S. 42.

(*f*) *Ex parte Bolland* (1871) L.R. 7 Ch. App. 24. Compare remark of Hagarty, C. J. O., in *Long* v. *Hancock* (1885) 12 Ont. App. 137, that, whether pressure was shown or not, a finding by a jury or trial judge that there was an intent to delay &c. should not lightly be set aside.