

circumstance is not regarded as a material differentiating factor. To the same effect see *The Molson's Bank v. Halter*, sup. (f)

19. **Civil action, danger of**—It is also well settled that a conveyance made by a debtor, under a reasonable impression that the consequence of his refusing to make it will be the institution of a suit to enforce the claim against him, is not voluntary. Such an impression may be, and usually is, the result of a direct threat by the creditor. (a) It is not necessary that the threat should relate to the immediate future, (b) nor will the mere fact that a creditor, after threatening to wind up a company, has postponed proceedings in the hope of its being reconstructed, avoid a subsequent confession of judgment in his favour. (c) See, however, sec. 16, ante.

That the debtor acted under an erroneous impression as to the intentions of the creditor will not prevent the conveyance from being involuntary. (d)

The fact that the pressure was resisted in one instance is immaterial, if the debtor finally came to the conclusion that the threats of the creditor would be put into execution. (e)

Assignments in cases in which a debtor yields to his desire to avoid the unpleasant consequences of civil proceedings, after

(f) As to the application of the maxim, *In pari delicto, potior est conditio possidentis aut defendentis*, in such cases as these, see *Ex parte Caldecott* (1876) 4 Ch. D. (C.A.) 150.

(a) *Reynard v. Robinson* (1833) 9 Bing. 717; *Johnson v. Fesenmeyer* (1858) 25 Beav. 88; *Brayley v. Ellis* (1882) 1 Ont. Rep. 119, aff'd 9 Ont. App. 565; *Sigs-worth v. Meriden Co.* (1883) 3 Ont. Rep. 413; *Slater v. Oliver* (1884) 7 Ont. Rep. 158; *Cascaden v. McIntosh* (1892) 2 B.C. 268; *Stephens v. McArthur* (1890) 6 Man. L.R. 496, rev'd in 19 S.C.R. 446, but not on this point. The principle has been declared to have no application where the creditor's threat of legal proceedings is no real compulsion, as where the effect of a homestead Act would be to absorb the greater part of the property, and leave practically nothing for the creditor. *Doll v. Hart* (1890) 2 B.C. 32. But this case is quite opposed to the rationale of the doctrine as well as to the general current of authority. The essential question is not whether the suit would benefit the creditor, but whether it would be detrimental to the debtor's business. In this point of view it is quite immaterial what the creditor will secure by the proceedings. The commercial standing of a debtor must be impaired by an action having the effect of disclosing his inability to pay his debts, and no ground can be suggested for supposing that his unwillingness to bring on such a disclosure can be at all diminished by his consciousness that the creditor's judgment will be unproductive.

(b) *Reynard v. Robinson* (1833) 9 Bing. 717.

(c) *Edison, &c., Co. v. Bank of B.C.* (1895) 3 B.C. 460, reversed, but on another ground. See sec. 33 post.

(d) *Thompson v. Freeman* (1786) 1 T.R. 155.

(e) *Johnson v. Fesenmeyer* (1858) 25 Beav. 88.