

veny. The jury expressly found that McGuiness knew the effect of delivering the goods to the defendants would be to compel him to close his business; and that the defendants had probable cause for believing at the time that McGuiness was unable to meet his engagements.

We think the jury were fully warranted by this evidence in finding as they did: indeed we think they would have been justified in finding that he contemplated going into insolvency. But the question is, whether contemplation of insolvency, means contemplation of making an assignment under the Insolvent Act. In *Gibbins v. Phillips*, 7 B. & C. 533, Bayley, J., says, in answer to the argument of the counsel, "You seem to treat contemplation of bankruptcy, as the contemplation of a commission of bankruptcy, which is not the legal meaning of that expression." And in giving judgment in the same case, he says, "If the party securing the debt, knew himself to be in such a situation that he must be supposed to have anticipated that a bankruptcy would in all human probability follow, then we think it was fraudulent within the meaning of the 6 Geo. 4 c. 16. In this sense, contemplation of bankruptcy has always been considered evidence of fraud, although the party may not have expected the actual and immediate issuing of a commission." In *Aldred v. Constable*, 4 Q. B. 674, where the question was whether a warrant of attorney given by a debtor was a fraudulent preference under the Bankrupt Act, Lord Denman, delivering the judgment of the court, says: "We cannot conceive that a particular act of bankruptcy must have been in contemplation to make a preference fraudulent and void. We do not find that bankruptcy must have been regarded as absolutely unavoidable. * * * If the debtor at the time of giving the warrant of attorney, considered that he was likely, from the condition in which he then stood, to become a bankrupt, and that he gave the warrant of attorney with the intention of securing his father's debt, when he knew that his assets were inadequate to the payment of all his creditors, the proof of fraudulent preference would be complete."

In the present case, the insolvent knew, before he gave up the goods, that he could not pay his debts, and anticipated that he might be obliged to close his business, and when he delivered the goods to the defendant, all doubt on that point seems to have been removed from his mind, because, as he said, "half his stock was gone," and he knew that the remainder of his assets, even if he could have collected the debts

due him, were insufficient for the payment of his other creditors. The necessary consequence of the transfer of the goods was to make McGuiness insolvent; because a man must be taken to intend that which is the necessary consequence of his act: *Stewart v. Moody*, 1 C. M. & R. 780.

The defendants knew, through their agent by whom they dealt with McGuiness, (the knowledge of their agent being their knowledge) that the effect of their taking the goods would be to stop McGuiness' business, and prevent him from paying his other creditors; it was therefore clearly an undue preference given to the defendants over the other creditors of the insolvent, and being so, it was void under the Act.

Rule discharged.

UNITED STATES REPORTS.

SUPREME COURT OF VERMONT.

JOHNSON V. TOWN OF WARBURGH.

Sunday Travelling.

One travelling upon the Sabbath, without excuse, cannot maintain an action against the town for any damage he may suffer, through defects in its highway.

[Am. Law Register, 545.]

Case for injuries received while travelling on a highway within the defendant town. The facts sufficiently appear in the opinion of

Ross, J.—The necessity which will excuse one for travelling on the Sabbath must be a real and not a fancied necessity. The statute reads: "No person shall travel on the Sabbath or first day of the week, except from necessity or charity:" Gen. St. ch. 93, sect. 3. It is not an *honest belief* that a necessity exists, but the *actual existence of the necessity*, which renders travelling on the Sabbath lawful.

The jury, under proper instructions, have found, that the travelling of the plaintiff on the occasion when he received his injury was not from necessity, and therefore unlawful. They have also found, that he has suffered damage from injuries received by reason of the insufficiency of a highway which it was the duty of the town to keep in good and sufficient repair. One this verdict the defendant moved for judgment in its favour, which the court below *pro forma* overruled and rendered judgment for the plaintiff against the exception of the defendants. Thus the question is distinctly presented for decision, whether a town is liable for damages sustained through the insufficiency of a highway