

of \$835 or thereabouts to get the 75 baskets of cheese out of bond; and there is the further fact that these identical goods or part of them were up to 10th July held by the Imperial Bank as security for \$1,000. . . .

These are circumstances which go to shew absence of fraudulent intent on the part of Garborino.

I find that Spada was in fact insolvent at the time of making to Garborino the transfer which is now impeached, but, in my opinion, Garborino did not know of that insolvency, did not know of Spada's intention to give up business or to abscond.

An agreement to give security, made in good faith, though indefinite in terms, may rebut the presumption of intent to prefer, but pressure is not now admissible to rebut the presumption of intent to give a preference: *Webster v. Crickmore*, 25 A. R. 97.

The prior agreement of 8th or 9th June in this case, whether the promise by Spada was a voluntary one or under pressure, is not material further than it is a factor in shewing Garborino's confidence in Spada, and that there was, so far as appears in evidence before me, no suspicion then of Spada being in financial difficulty, or that he meditated mischief. . . .

This action was commenced on 8th August, 1905, so the transfer to Garborino must be presumed "prima facie to have been made with the intent of giving Garborino a preference over the other creditors" of Spada. This presumption is a rebuttable one: see *Davis v. McLean*, 2 O. L. R. 466. It is rebutted by the evidence which satisfies me that the transaction was entered into by the transferee in good faith without knowing and without having reason to believe that the transferor was insolvent. This was not a transfer of substantially the whole of the debtor's estate. . . .

The facts do not bring this case within *In re Jukes*, [1902] 1 K. B. 55, as was contended. The evidence does not disclose that Garborino had knowledge of any other creditor of Spada than the Dominion Bank and the Imperial Bank. . . .

If Garborino has satisfied the onus cast upon him of establishing that he had no intent to defraud or defeat the creditors of Spada, that he had no knowledge of the insol-