

and that he did not actually discharge the bond until some time afterwards will not invalidate the transfer of the security. (b)

9. Pressure, effect of, where debt not yet due—The fact that the debt the payment of which was demanded was not due is merely one of the circumstances to be considered by the jury as bearing upon the fraudulent intent of the debtor. (a)

"In cases where the payment has been made before the debt was due, that circumstance has sometimes been relied on as an indication that the payment is voluntary, and at other times has been said to be immaterial, but neither in the one case nor in the other do these facts of themselves furnish any criteria; they are only ingredients in the whole question upon which the jury are to come to a determination." (b)

The fact that the debt for which a security was given on the demand of the creditor was not yet due is sometimes mentioned among the reasons assigned for avoiding the transaction. (c)

10. Fraud not conclusively negatived by proof of pressure—A necessary deduction from the principle that evidence of pressure is admitted for the purpose of rebutting the presumption of fraudulent intent on the debtor's part is, that it is still open to the attacking creditor to shew that the transfer, although made under pressure, was actually fraudulent. (a)

"The motives and intentions of the bankrupt may be material or immaterial, or, to speak accurately, may be more or less material, according to his situation, to the nature of the threat, and the degree and period of urgency by the creditor." (b)

Thus a threat of proceedings is not always conclusive proof that the payment was not voluntary. It may still be a question for the jury to say whether the payment was made under fear of compulsion or voluntarily, with a view to favour the creditor, as

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

(a) *Strachan v. Barton* (1856) 11 Exch. 647. S.P., *Hartshorn v. Slodden* (1801) 2 B. & P. 582. *Crosby v. Crouch* (1808) 11 East 256. *Ree v. Smith* (1868) 15 Grant 344.

(b) *Cook v. Rogers* (1831) 7 Bing. 438, per Alderson, B.

(c) See *Powell v. Calder* (1885) 8 Ont. Rep. 505.

(a) That a note given under pressure was ante-dated, and that some of the notes it was given to cover were not yet due is some evidence of fraud. *Clemmow v. Converse* (1869) 16 Grant 547.

(b) *Cook v. Rogers* (1831) 7 Bing. 438, per Alderson, B. (p. 449).