ment was made to the creditor with intent to retain the property of the debtor's wife, and on that ground the creditor (strange to say) was ordered to refund the money, but this case has not been followed, and is opposed to many more meritorious decisions. (Refer to the comments on this case in Archbold's Bankruptcy, vol. i., p. 430.) *Belcher* v. *Jones*, 2 M. & W. 258, is a strong authority for the position that the intent must be to prefer the creditor who is paid. So it is said, if A. and B. are both creditors for same debt, payment to A. with the intention of securing B. is not a fraudulent preference of A : see Byles on Bills, p. 464, note f (12th ed.).

From a comparison of other English cases, the law laid down there seems to be this : If a party to a bill or note for the accommodation of the maker has money sent to him by the principal debtor, with which he pays the notes, that is a fraudulent preference of the surety and the assignee can recover from him. But if the surety is not a party to the security, but is only collaterally liable, as having given a separate guarantee for the bill or note, then his getting the money from the principal debtor and paying it would only constitute him an *agent* for that purpose of the person liable on the bill or note, and the transaction would not amount to a fraudulent preference of the person so collaterally liable : see *Abbott* v. *Pomfret* 1 Bing. N. C. 462, and *Guthrie* v. *Devereux*, 2 C. & P. 301. It is to be remarked, however, that this distinction is not recognised in *Abbott* v. *Pomfret*, as reported in 1 Hodges, 25. There the judges are reported as holding the view (which is the more reasonable one) that whether immediately liable as being a party to the bill, or collaterally liable as having guaranteed the payment of it, the receipt of the money by the surety from the principal to discharge the note would be a fraudulent preference of the surety.

Another point of interest in this connection may be mentioned. If payment is made by the principal debtor to the creditor, and this payment is afterwards avoided as a preference under the Bankruptcy Act, the surety is not discharged by reason of such payment. His liability revives on the avoidance of the preferential payment : *Pritchard* v. *Hitchcock*, 6 M. & Gr. 157, followed in *Petty* v. *Cooke*, L. R. 6 Q. B. 790.

THE CHARITABLE SPIRIT OF THE LAW.

(Concluded.)

At the conclusion of the last article on the above subject allusion was made to certain apparent departures from a spirit of charity. It seems well to notice them here since many of them appear in connection with the presumption against crime, illegality, and dishonesty, to which attention has hitherto been confined. They are founded, for the most part, on considerations of public policy. Thus, both in criminal and civil cases, a person is liable for what is done under his presumed authority : Tayl. on Ev.; Ed. 7, 129-130, although, indeed, the act of an agent can never convict his principal of a *crime* without further proof (*ib.* 762). Another exception might appear to exist in the rule laid down in *Rex* v. *Woodfall*, 5 Burr. 2667 (1770) : "Where an act is in itself unlawful the proof of justification or excuse lies on the defendant, and on failure thereof *the law implies a criminal intent.*" Yet the safety of society, joined to the difficulty of proving psychological facts, renders this presumption necessary: Best. Ev. 548. Again, Judges will occasionally permit or even advise juries to infer negligence from the mere happening of an accident, *e. g.*, *Byrne* v. *Boadle*,