

A similar conclusion was arrived at in New Brunswick. (f)

In *McCrae v. White* (g) Strong, J., declared that he could not agree with the views of the judges of the Ontario Court of Appeal, saying that, leaving the earlier authorities out of account, the construction placed by them upon the section was inconsistent with its language, inasmuch as a creditor who obtained payment as the direct result of the pressure to which he subjected his debtor could not be regarded as having obtained an "unjust" preference. The soundness of these views was also doubted by Gwynne, J., in the same case. Moreover it is difficult to see how the decision of the Privy Council (referred to in sec. 35 post) upon words of a similar tenor in the Queensland Act can be reconciled with the theory of the Ontario Court of Appeal. Upon the whole, therefore, it would seem to be quite as likely as not that, if the Insolvency Act had remained in force, *Davidson v. Ross* would, sooner or later, have been overruled.

**32. Ontario Assignments Acts**—Secs. 1 and 2 of the Assignment Act of Ontario, the only ones with which we are concerned in this article, represent, with some alterations, the statute known as the Indigent Debtors' Act of Upper Canada, (22 Vict. c. 96, Consol. Stat. U. C. c. 26, secs. 17, 18.) The first of these sections makes null and void a confession of judgment etc. by an insolvent given voluntarily or by collusion with a creditor, with intent to defeat or delay his creditors or give one or more of them a preference. This provision has been incorporated without change in Rev. Stat. Ont., 1877, c. 118, sec. 14, in Rev. Stat. Ont. 1887, c. 124, sec. 1, and in Rev. Stat. Ont. 1897, c. 147, s. 1.

Under this section a cognovit is invalid, though obtained under threat of proceedings, where no part of the creditor's claim was due at the time of demand, and both parties knew that the state of the debtor was financially hopeless. The pressure under such circumstances resolves itself into this: that the creditor suggested an evasion of the law which would enable him to obtain priority and preference over the other creditors, and the debtor acquiesced in and adopted that suggestion. There is, therefore, a joint act of such a character as to come within the term collusive. *Meriden Silver Co. v. Lee* (1883) 2 Ont. Rep. 451.

(f) *McLeod v. Wright* (1877) 17 New Brunsw. (1 P & D) 68, per Allen, C.J. and Weldon, J.; Wetmore, J. diss.

(g) (1883) 9 S.C.R. 22.