Wilson expressed the opinion that the sub-section applies to dealing not only by an insolvent with strangers, but to his dealings with a creditor. Assuming, for the sake of argument, that my learned brother is right, and that the giving of the ante-dated note, and leaving the action upon it undefended, while pleas were put in to actions by other creditors, are "acts" within sub-section 3, there still remains the question whether it can be carried higher in favor of creditors disappointed by the act of the debtor, than a fraudulent preference under the English Bankruptcy Law; or rather a preference which would be held fraudulent but for the circumstance that it was obtained from the debtor by pressure exercised upon the debtor. If, in England, pressure by the creditor is held to rebut the presumption of fraudulent intent, which would otherwise arise, I do not see how, consistently with English decisions, we can hold that pressure has not the same effect under our Insolvency law.

I think, as I have already intimated, that what was done was the result of pressure. I think that the debtor would have avoided what he did, if he had felt that he could do so; and that he did what was demanded of him in order to escape the consequences threatened by Converse, that his motive was to escape those consequences, not with any fraudulent object of preferring Converse & Co. I think the presumption of fraud is fairly rebutted.

It may well be doubted whether it should be in the power of a creditor, by the exercise of pressure upon his debtor, to obtain for himself a preference over other creditors; but while a fraudulent intent is made necessary in order to avoid such preference, anything that is sufficient to rebut what would, *prima facie*, be a fraudulent intent, is necessarily receivable with that view. It is a logical consequence from the state of the law. I regret to have to give effect to it in this case, but in my view of the law I cannot avoid it.

Some question is made as to the *bona fides* of the debt for which the judgment was recovered. I agree that if a note was given advisedly and willingly for a larger sum than was really due, in order to the recovery of judgment for more than the true debt, it would be void under the Statute of Elizabeth; but I do not think that the plaintiff has established such a case.

The plaintiff's bill must be dismissed, and with costs. I may add in justification of the assignee, that it appears to have been a fair case for the institution of a suit for the benefit of the estate. There was insolvency and a preference which, supposing it to be within the act, as my brother Wilson takes it to be, would have been sufficient but for the pressure which is shown by the evidence for the defence.

IN CHANCERY—MASTER'S OFFICE.

RE McMORRIS.

Dower.

A widow who has barred her dower in a mortgage, given by the husband for his own debt, is entitled to have the mortgage paid off by the husband's assets. If she claim dower merely out of the equity of redemption, she has priority over creditors, but if out of the *corpus* of the property, she is postponed to them. On a sale of the lands, as soon as the debts of the husband are paid, she takes precedence over the heir and volunteers, claiming under the husband, and becomes absolutely entitled to her rights as dowress in the balance of the proceeds. *Sheppard* v. *Sheppard*, 14 Grant, 174, noticed.

[May, 1872, *Mr. Boyd.*]

In this case land mortgaged by the testator was ordered to be sold, and by consent of the widow her rights as dowress were to be ascertained in the Master's office. She also claimed dower in lands for the purchase of which her husband had been in treaty with the Crown.

Mr. Holmested for the widow.

Mr. McWilliams for the legatees.

MR. BOYD.—The widow's position in equity seems to be this: having barred her dower in a mortgage in fee given by her husband for his own debt, he covenanting to pay it, she surviving her husband is, in one aspect, in the position of surety for the debt, and can claim that the mortgage should be paid out of the husband's assets, so as to relieve her estate in the land. If she claims dower merely out of the equity of redemption, that would be given her of course in priority to creditors, but if, as here, she claims dower out of the whole *corpus* of the mortgaged land, then she cannot do this to the prejudice of creditors. According to the decisions of this court, general creditors would have the right to marshall the mortgage debt upon the land mortgaged to the prejudice of the widow's dower. But after payment of creditors her rights as dowress accrue absolutely to a life estate in one-third of the lands mortgaged or of the proceeds of the sale thereof. When the mortgage is paid out of the testator's assets, as in this case, by a sale of the lands, it is equivalent to a payment by the testator himself, so far as the dowress is concerned. Had the mortgage been redeemed by the heir out of his own moneys, questions of contribution by the widow would have arisen, which do not arise in the present case. The wife simply bars her dower with a view to secure the debt due by her husband; when that debt is paid by the husband's estate, she is remitted, as against the heir and volunteers claiming under the husband, to her full rights as dowress in the whole estate mortgaged. *Sheppard* v. *Sheppard*, 14 Grant, p. 174, and the passage from Park cited with approval therein are authorities for these positions. I do not regard this case as over-ruled save in so far as it decides that creditors are to be postponed till dower is paid out of the mortgaged estate, see *White* v. *Bastedo*, 15 Gr. 546, and *Thorpe* v. *Richards*, ibid, 403. I do not see upon what principle her claims to dower should be postponed to the legatees in the will named, and indeed by the decree, on further directions, they are only to be paid after the satisfaction of all other claims. As to arrears she can only have these upon contributing one-third of the interest on the mortgage debt since the death to the time of the sale.

Craig v. *Templeton*, 8 Gr. 483, goes to the limit of the law, and that case cannot be extended to meet the present, where the right to a patent was cancelled in the testator's life, and by a mere act of grace was it given to his child afterwards.