

The Irish Court of Appeal has laid it down broadly that the mere apprehension of consequences, civil or criminal, to the debtor himself will not validate a payment, where the other circumstances bring it within the rule against fraudulent preference, and held that an act of fraudulent preference is committed by a trader who, after having forged acceptances or bills, takes up the instruments before their maturity and before the holder ascertains the fact of the forgery, without any active pressure and simply for the purpose of suppressing the evidence of his crime. (b)

But this decision cannot be regarded as good law in view of several later decisions by the English Court of Appeal. In one of these it was declared that if a debtor, on the eve of insolvency, and just before he becomes bankrupt, sells goods in order that he may restore money which he has stolen from his master or from anybody else, and does restore the money, it was impossible to hold that such a payment could be treated as a fraudulent transfer. (c) A few years later the same court held that, as the relation between a defaulting trustee and a co-trustee is not that of debtor and creditor, a sum of money transferred to repair the breach of trust is not fraudulent, whether it was made under pressure or not. (d) And quite recently the same doctrine has been reiterated, the court expressly declining to rule that the fact of their having been no actual threat of a prosecution constituted a ground for distinguishing the case from those which preceded it. (e) It is true that these were all cases in which the defaulter held a fiduciary relation to the person to whom the money was restored, but the language of James, L.J., as quoted above, and of the judges in *Ex parte Taylor*, sup. shews that this

(b) *Ex parte Hibernian Bank* (1863) 14 Ir. Ch. 113. Blackburne, L.J., said: "The law necessarily deals with his acts and with his motives only so far as they tend to evince his intention; but I think that the fears or hopes that form the bankrupt's reasons for his resolution cannot alter or qualify its effect, or shew the absence of volition in the act which the law holds to be fraudulent. So far from doing so, they shew his reasons and motives for the illegal act which he has determined to commit."

(c) *Ex parte Stubbins* (1881) 17 Ch. D. 58 per James, L.J. (p. 69).

(d) *Ex parte Taylor* (1886) 18 Q.B.D. (C.A.) 295, followed (with some reluctance) in *Ex parte Ball* (1887) 35 W.R. (C.A.) 264. S.P., *The Molson Bank v. Haller* (1890) 18 S.C.R. 88 (Fournier and Patterson, JJ., dissenting on the special ground that, on a proper construction of the statute, the effect of the transaction, not the intent of the debtor, was the material point. See sec. 32 post).

(e) *New's Trustee v. Hunting* (1897) 2 Q.B. (C.A.) 27.