money from prosecutor by his conduct. This was held to amount to not guilty.

I think the law laid down in this case fully supports the present conviction, and that our judgment should be for the Crown.

Judgment for the Crown.

CHANCERY.

CLEMMOW v. CONVERSE.

Insolvent debtor—Preference—Pressure.

A preference which a debtor is induced to give by threats of criminal and other proceedings, is not void under the Indigent Debtors' Act of 1859, or the Insolvent Act of 1864:

But to sustain the preference the pressure must have been real, and not a feigned contrivance between the debtor and creditor to wear the appearance of pressure for the mere purpose of giving effect to the debtor's desire and intention to give a preference.

[16 Chan. Rep. 547.]

Examination of witnesses and hearing at Ottawa.

Mr. *Crooks*, Q. C., and Mr. *Kennedy* for the plaintiff.

Mr. *Blake*, Q.C., for defendant Walker.

SPRAGGE, V. C.—It is clear from the evidence, particularly that of Walker, that it was apparent to Converse and to J. T. Lamb, that the effect of the giving of the ante-dated note, and of the legal proceedings to be taken upon it, would be to close the business of Lamb—to put him in insolvency, unless he, Lamb, could obtain aid from some other quarter. It was the intention of Converse to get execution in as short a time as possible, in order to be before other creditors; and the evidence of Mr. Walker, the solicitor of Converse & Co., would lead to the inference that Lamb facilitated this passively, and was anxious, if he could, to facilitate it actively; but Mr. Lamb's letter to Converse & Co., of 4th July, 1865, scarcely supports this. The peculiar course taken by Walker was his own idea, in order to conceal the proceedings from other creditors; but Converse, though not aware of the mode intended by his attorney to gain priority, was anxious that such steps should be taken as would give his firm priority. His anger at the deception which he alleged, and Lamb admitted, had been practised upon him, as to the advance of $1,000 being obtained by representation as to real security, may have been the reason for the course he took. He at least suspected, if he did not know, that Lamb was in a precarious position, perhaps on the eve of insolvency, and his leading object was to secure the debt of his firm, and that at the expense of other creditors, if necessary.

In order to effect this he brought pressure to bear upon J. T. Lamb, sufficient, under the English cases, to make his act not a voluntary act; unless the proper conclusion is, that although there was pressure, still the giving of the ante-dated note was not really the result of the pressure, but in order to give a fraudulent preference: *Cook* v *Pritchard*, 6 Scott, N. R. 34. The evidence of this is that above adverted to. I think it shows that he gave the note under pressure; and further, that having given it, his desire was that Converse & Co. should thereby obtain a preference. Whether he still apprehended the possibility of criminal proceedings being taken, as threatened by Converse, or from any other reason, he was anxious that they should obtain execution in priority to other creditors. The principle upon which, in England, pressure is held to be material, is this: *prima facie*, a payment by one in so hopeless a state of insolvency that his payment is to be looked upon as made in contemplation of bankruptcy; or a delivery of goods or other effects by a debtor in that position, is a fraudulent preference—the preference is presumed to be made in order to defeat the Bankrupt Laws: and the effect of the payment or other act of the insolvent, being under the pressure of the creditor, is to rebut the presumption that would otherwise arise: *Bills* v. *Smith*, 6 B. & S 321. It must of course appear that the pressure is real, not a feigned contrivance between the creditor and debtor, to wear the appearance of pressure, while the real desire and intention is to give a preference.

The circumstance that in this case the note was ante-dated, and that some of the notes which it was given to cover were not yet due, is some evidence of fraudulent preference; but it is not conclusive: *Strachan* v. *Barton*, 11 Ex 647, and there are other cases to the same point. It would seem too, from the evidence, that it was not a case where preference was given before the expiry of credit, but that the notes still current were renewals of notes given for payment of goods. Converse, too, was in a condition to dictate terms to Lamb, and availed himself of his position to insist upon that which enabled him to take immediate proceedings against his debtor. It appears further that Lamb did not consider his insolvency inevitable: he still clung to the hope of being able to continue his business: he hoped for "outside aid" and asked and obtained from Converse a promise of a further supply of goods, to a small extent, upon security, in order to make up his stock. Under these circumstances, I think it would be held in England that a preference given by a debtor to his creditor, was not a fraudulent preference.

This act of J. T. Lamb, if it be void, must be so under the Indigent Debtors' Act, 22 Vic. ch. 96, or under the Insolvency Act of 1864. It was decided in *Young* v. *Christie*, 7 Grant, 312, that allowing judgment to go by default in an action, and defending another, the effect being to enable the one creditor to recover judgment before the other, is not a preference which is avoided by the former act.

Then as to the Insolvency Act of 1864. Sub-section 3 is the clause that bears upon this case. It avoids "all contracts or conveyances made, *and acts done* by a debtor fraudulently to impede, obstruct or delay his creditors in their remedies against him, or with intent to defraud his creditors or any of them, and so made, done, and intended, with the knowledge of the person contracting or acting with the debtor, and which have the effect of impeding, obstructing or delaying the creditors in their remedies, or of injuring them or any of them."

In *Newton* v. *The Ontario Bank*, 13 Grant, 652, I thought that this sub-section does not apply to a preference given by a debtor to one creditor over another. Upon the hearing of that case upon appeal (15 Grant, 283,) my brother