Considering the idea which is conveyed to the non-legal mind by the word "pressure", it is most unfortunate that this term has come to be used to express indifferently the influence which may make a conveyance involuntary in the latter as well as the former sense. (*c*) The consequence has been that, although the question whether pressure was applied is one of fact, and therefore for a jury in the first instance (see post 24) the courts have often found themselves in the anomalous and inconvenient position of being obliged to uphold a conveyance, though no pressure in the popular sense of the word is established. (*d*) A general statement of the circumstances under which legal pressure exists can only be made entirely accurate by the use of some qualifying epithet, (*e*) or by some form of words which takes due account of the double meaning of "voluntary." (*f*)

18. Criminal Prosecution, danger of—It has never been questioned, and often directly decided, that a conveyance induced by a threat of a prosecution is not voluntary. (*a*)

But whether the expectation that a criminal may feel that, if his offence is discovered, he will be prosecuted is of itself a coercive influence amounting to pressure in the legal sense, is a question upon which the authorities are in conflict.

"If the pressure was *such that it overweighed the debtor's own inclination, and induced him to pay against his will,* that would be sufficient pressure within the meaning of the bankruptcy laws." *Green* v. *Bradfield* (1844) 1 C. & K. 449, per Tindal, C.J.

(*c*) Lord Chelmsford alludes regretfully to the retention of the term "pressure" "although it is now only calculated to mislead, as it has been decided that the only one question in cases of this description is whether the act is voluntary on the part of the bankrupt." *Johnson* v. *Fesenmeyer* (1858) 3 De G. & J. 13, p. 25.

(*d*) *Boydell* v. *Gillett* (1835) 2 Cr. M. & R. 579: *Ex parte Bolland* (1871) L. R. 7 Ch. App. 24.

(*e*) "The amount of pressure is not a matter of very considerable importance, because to make the transaction fraudulent, the preference must proceed voluntarily from the bankrupt himself, which it does not if he was induced to do it by the pressure of the debtor whether it be much or little." *Johnson* v. *Fesenmeyer* (1858) 25 Beav. 88, per Romilly M. R.

(*f*) A fraudulent preference "arises where the debtor in contemplation of bankruptcy, that is knowing his circumstances to be such that bankruptcy must be, or will be, the probable result, though it may not be the inevitable result—does, *ex mero motu*, make a payment of money, or a delivery of property to a creditor, not in the ordinary course of business, and without any pressure or demand on the part of the creditor." *Nunes* v. *Carter* (1866) L.R. 1 P. C. 348, per Lord Westbury.

(*a*) *Ex parte De Tastet* (1831) Mont. 138: *Ex parte Caldecott* (1876) 4 Ch. D. (C.A.) 150: *In re Boyd* (1885) 15 L.R. Ir. 521: *Ex parte Boyd* (1889) 6 Morrell's Bankr. Cas. 209: *Clemmow* v. *Converse* (1869) 16 Grant 547: *Ivey* v. *Knox* 1885) 8 Ont. Rep. 635: *Bank of Toronto* v. *McDougall* (1865) 15 U.C.C.P. 475.