McGuiness only had $9.50 worth of stock remaining, while his liabilities were $1475. The plaintiff, as assignee of McGuiness, now brought trover for the value of goods so transferred to defendants. At the trial at the York Sittings, before Allen, J., the learned Judge directed the jury that under the 89th section of the Insolvent Act, the transfer of the goods to the defendants would be void, if at that time McGuiness believed that the necessary result of making the transfer would be to close up his business and prevent him from paying his other creditors; and that the words of the Act, "in contemplation of insolvency," did not necessarily mean, contemplation of an assignment under the Insolvent Act. The jury found that McGuiness knew that the effect of delivering the goods to the defendants would be to compel him to close his business; and that the defendants had probable cause for believing at the time that McGuiness was unable to meet his engagements. Verdict for plaintiff.

A rule *nisi* was subsequently obtained for a nonsuit, pursuant to leave reserved, or for a new trial.

The ground for a nonsuit was that there was no sufficient evidence of the plaintiff's having been properly appointed assignee; that, though he was also official assignee, and, if there was no election, would, by operation of law, become assignee to the estate, yet, as the plaintiff had claimed as an elected assignee, he could not rely on his position of official assignee.

Ground for new trial: Misdirection as to the transfer.

Fidgeon v. *Sharp*, 5 Taunt. 539; *Bell* v. *Simpson*, 2 H. & N. 409; *Atkinson* v. *Brindall*, 2 Bing. N. C. 225; *Hartshorn* v. *Slodden*, 2 B. & P. 582; *Crosby* v. *Crouch*, 11 Ea 225, were cited.

Gregory shewed cause. There is nothing in the objection that plaintiff was not shewn to have been properly elected assignee, as, even if he was not, then, there being no valid election, he became assignee by operation of law. [Ritchie, C.J. The law clearly must recognise him in one capacity or the other.] It was properly left to the jury to say whether the defendants believed, or had good reason to believe when they took the goods, that it would have the effect of causing the debtor's business to suspend. [Ritchie, C. J. Is not the question put to the jury in England thus: "If the preference is made as the voluntary act of the debtor, it is fraudulent; while, if made through pressure of the creditor, it is not so?"] Sections 86 and 89 of our Act are different from the English Acts, and warranted the direction in this case. "In contemplation of insolvency," does not mean in contemplation of actually going into the Court, but only in contemplation of the debtor's insolvent circumstances: *Gibson* v. *Muskett*, 4 M. & G. 169; *Poland* v. *Glyn*, 4 Bing. 22, note; *Aldred* v. *Constable*, 4 Q. B. 674; *Gibbins* v. *Phillipps*, 7 B. & C. 529, 534; *Flook* v *Jones*, 4 Bing. 25; *Belcher* v. *Prittie*, 10 Bing. 408.

It will probably be contended that this was not a transfer but a payment, and therefore, not having been made within thirty days of the assignment, was valid under Section 90. But the payment contemplated by that section must clearly be a payment in money. The case of *Young* v. *Fletcher*, 3 H. & C. 732, is an additional authority that an assignment by an insolvent trader to a creditor of a part of his property is fraudulent, if the necessary effect is to stop the trader's business, if the assignee is aware of that consequence.

E. L. Wetmore, in support of the rule. The plaintiff having claimed all through the case as an elected assignee, he was bound to establish his election, and cannot fall back on his position of official assignee. Then, as to the transfer. [Ritchie, C. J. If the debtor makes a transfer which makes him insolvent, must it not be presumed to have been made in contemplation of insolvency?] Not, when it is made more than thirty days before the assignment: then there is no presumption. In *Crosby* v. *Crouch*, where the defendant, having reason to believe his debtor in bad circumstances, and so believing required and obtained from the debtor security by deposit of goods, the debtor having afterwards become bankrupt, the plaintiff, who as his assignee brought trover for the goods, was nonsuited. That case is very similar to this. Here, as in that case, the transfer was made at the request of the creditor. *Fidgeon* v. *Sharpe* is a strong case for the defendants: there, where a part of the stock in-trade was actually delivered, it was held that though the debtor contemplates that his trade must cease, and that he cannot pay his creditors unless they give him time, he does not therefore necessarily contemplate bankruptcy. So in *Bell* v. *Simpson*: A sale by a trader in insolvent circumstances, and on the eve of bankruptcy, of his stock-in-trade and the bulk of his property to one of his creditors, the consideration being in part an old debt, is not *per se* an act of bankruptcy, though the effect is to stop the trading. The learned Judge should have left it to the jury to say whether the transfer was made in contemplation of McGuiness making an assignment under the Act. That would have been according to the direction