

The exposition of the statute, therefore, which is now accepted is that, "to ascertain whether there has been a fraudulent preference, it is necessary to consider what the dominant or real motive of the person making the preference was; whether it was to defraud some creditors or for some other motive." (*k*) The older decisions are considered to be useful as guides, but are to be regarded so far only as they are in accordance with the Act itself, and throw light upon it. (*l*) One important respect in which those decisions are apparently of no authority is that, contrary to the rule prevailing before the passage of the Act, (see especially sec. 25, *ante*), the actual intention of the debtor is the material point to be settled, and that the doctrine that a man must be taken to have intended the natural consequences of his acts does not apply to the construction of the clause upon which we have been commenting. (*m*)

31. Canada—Dominion Insolvent Act.—Several clauses of these statutes have been considered in connection with the doctrine of pressure. Sec. 3 of the Act of 1864 (equivalent to sec. 86 of the Act of 1869, and sec. 130 of the Act of 1875) ran as follows: "All gratuitous contracts or conveyances . . . made by a debtor afterwards becoming insolvent, . . . within three months next preceding the date of the assignment, . . . and all contracts by which creditors are injured, obstructed or delayed, made by a debtor unable to meet his engagements, and afterwards becoming an insolvent, with a person knowing such inability, or having probably cause for believing such inability to exist, or having such inability as public and notorious, are presumed to be made with intent to defraud his creditors."

The presumption of a fraudulent intent under the section was held to be rebutted by proof of pressure. (*a*)

Sec. 8, sub-s. 3 of the Act of 1864 (equivalent to sec. 88 of the Act of 1869, and sec. 132 of the Act of 1875) avoided contracts or conveyances with intent fraudulently to impede, obstruct or delay creditors in their remedies, or with intent to defraud any of them, or which had the effect of impeding, etc., or of injuring them.

(*k*) *New, Prance, and Gerrard's Trustee v. Hunting* (C.A. 1897) 2 Q.B. 270, per Smith, L.J. See also the remarks of Baggallay, in *Ex parte Hill* (1883) 23 Ch. D. 701, and of Porter, M.R., in *re Boyd* (1885) 15 L.R. Ir. 521 (p. 548).

(*l*) *Ex parte Griffith* (1883) 23 Ch. D. (C.A.) 67.

(*m*) *New, Prance, and Gerrard's Trustee v. Hunting* [1897] 2 Q. B. (C. A.) 27. What the relation of this doctrine may be to the principles discussed in sec. 25 is an interesting question which has yet to be considered.

(*n*) *McFarlane v. McDonald*, 21 Grant Ch. 319; *McWhirter v. Royal Can. Bk.* (1870) 17 Grant Ch. 480; *McWhirter v. Thorne* (1869) 19 U.C. C.P. 303.