

preference if he yielded to the joint motives of pressure and inclination. (c)

Where a loan, made for the specific purpose of tiding a debtor over a business crisis, does not avert bankruptcy, the return of the money is not a fraudulent preference, where the debtor in restoring it, acted partly from a desire to do what was honourable, and partly out of deference to the representations of one of the guarantors of the debt that it could not be used safely or honourably. (d)

24. Whether the debtor acted under pressure a question of fact.—The question whether the preference was due to the bona fide pressure of the creditor or was accorded voluntarily by the insolvent is one of fact, and usually for the jury, (a) that is, if there is any doubt as to the real object of the parties. (b)

"If the act was spontaneous on the part of the debtor, and there are no circumstances to rebut the presumption which arises from the act having been purely voluntary on his part, the jury should be told to infer that the preference thus given was fraudulent and wrongful. But if there are circumstances by which the presumption may be rebutted, these circumstances, whatever they may be, are for the consideration of the jury, and cannot properly be withdrawn from them." (c)

The judge cannot state the degree of urgency which is required in any particular case. (d)

IV. *How far a conveyance of an insolvent debtor's whole property is valid.* (See also sec. 16, ante).

25. General rule applied in England.—In England the rule is well settled that a transfer of the debtor's whole property (a)

(c) *Strachan v. Barton* (1856) 25 L. J. Exch. 182; 11 Exch 647.

(d) *Edwards v. Glyn* (1859) 2 El. & El. 29.

(a) *Johnson v. Fesenmeyer* (1850) 25 Beav. 88.

(b) *Ansell v. Bean* (1831) 8 Bing. 87; S. P. *Ex parte Taylor* (1886) 18 Q. B. D. (C. A.) 295; *Ex parte Craven* (1870) L. R. 8 Eq. 648; *Brayley v. Ellis* (1885) 9 Ont. App. 560; *Lang v. Hancock* (1885) 12 Ont. App. 37; *Cook v. Rogers* (1831) 7 Bing. 438; *Hale v. Alnutt* (1856) 18 C. B. 505; *Pennell v. Heading* (1862) 2 F. & F. 744; *Erle C. J.*; *Bank of Toronto v. McDougall* (1865) 15 U. C. C. P. 475.

(c) *Bills v. Smith* (1865) 6 B. & S. 314, per Cockburn C.J. (p. 321).

(d) *Strachan v. Barton* (1856) 11 Exch. 647.

(a) *Lindon v. Sharp* (1843) 6 M. & G. 895; *Goodricke v. Taylor* (1864) 2 De G.J. & S. 135; *Woodhouse v. Murray* (1867) L.R. 2 Q.B. 634; *Rust v. Cooper* (1777) Cowp. 629; *Alderson v. Temple* (1768) 4 Burr. 2235; *Young v. Fletcher* (1805) 3 H. & C. 732; *Newton v. Chandler* (1806) 7 East 138, following *Butcher v. East*, 1 Doug. 294; *Thornton v. Hargreaves* (1800) 7 East 544; *Ex parte Mackenzie* (1873) 28 L.T.N.S. 486; *Stanger v. Wilkins* (1854) 19 Beav. 626; *Ex parte Wright* (1876) 3 Ch. D. 70; *Ex parte Foxley*, L.R. 3 Ch. 515; *Smith v. Cannan* (1853) 2 El. & Bl. 35; *Ex parte Wensley* (1862) 1 De G.J. & S. 273; *Smith v. Timms* (1863) 1 H. & C. 849; *Johnson v. Fesenmeyer* (1858) 23 Beav. 88. See, however, *Ex parte Boyd* (1889) 6 Morrell's Bankr. Cas. 209.