APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Napier.

1918, November, 20, 21, 22, and 26, December, 4.

THE OFFICIAL ASSIGNEE OF MADRAS (PETITIONER), APPELLANT,

v.

T. B. MEHTA & SONS (GARNISHEES), RESPONDENTS.*

Presidency Towns Insolvency Act (III of 1909), *secs.* 55 *and* 56—*Transfer of property by debtor to a creditor—Fraudulent preference—'With a view of giving preference,' meaning of—English Bankruptcy Act,* 1883, *sec.* 48—*Construction adopted in English cases, applicability of, to the Indian Act.*

A trader, being in very embarrassed circumstances and unable to meet his obligations as they fell due, sold to one of his creditors, for what was found to be a fair price, a large quantity of diamonds pledged by him with certain other creditors and thereby paid off the debts due to the latter and the purchasing creditor; the balance was paid to the debtor who kept his business going by paying off other pressing creditors with that amount. The debtor was adjudged an insolvent on a petition presented within three months of this transaction. On an application by the Official Assignee filed before a Judge of the High Court in Insolvency to declare the transfer void under sections 55 and 56 of the Presidency Towns Insolvency Act:

Held, that the transaction was not void as a fraudulent preference under section 56 of the Presidency Towns Insolvency Act; nor was it void under section 55 of the Act as it was made in good faith and for valuable consideration.

Per curiam.—To bring a transaction within the scope of section 56 of the Act, it must have been entered into with the dominant view of preferring particular creditor.

The construction, adopted in several English decisions and approved by the House of Lords in *Sharp* v. *Jackson*, (1899) A.C., 419, on the corresponding provision in section 48 of the English Bankruptcy Act, 1883, should be followed in construing similar language used in section 56 of the Presidency Towns Insolvency Act (III of 1909).

Sharp v. *Jackson*, (1899) A.C., 419; *Ex parte Griffith, In re Wilcoxon* (1889) L.R., 23 Ch.D., 69; and *Ex parte Hill, In re Bird*, (1889) 23 Ch.D., 695, followed; *Nalam Viswanathan.* v. The *Official Assignee of Madras*, (1915) 32 I.C., 795 dissented from.

APPEAL against the order and judgment of COUTTS TROTTER, J., dated the 13th December 1917, passed in the exercise of the insolvency jurisdiction of the High Court in I.P. No. 115 of 1917.

* Original Side Appeal No. 4 of 1918.

One Muthia Chetty, who was a diamond merchant in a large way of business, was in the middle of May 1917 in very embarrassed circumstances and was unable to meet his obligations as they fell due. He had large dealings with several merchants, among others with a firm of diamond merchants in Madras, known as T. B. Mehta & Sons, to the extent of Rs. 36,000 and odd about that time against which he had given eight hundis which were outstanding and also another sum of Rs. 3,000 on general account. Two hundis which fell due on the 19th May were not presented for payment at his request; but a third hundi which also fell due about the same time was not met and the firm began to press him. The debtor had pledged large quantity of diamonds with Nattukottai Chettis who were his creditors for a large amount of loans advanced by them to him, and he proposed to Mehta & Sons that they should purchase the diamonds under pledge, and, after paying the amount due to the pledgees, pay themselves their own debts. The firm of Mehta & Sons accepted the proposal; and the sales were accordingly effected in the course of five transactions between 25th May and 12th June 1917 for a total price of Rs. 2,87,000; the pledgees being paid their dues, the debts of the vendee firm were discharged out of the balance, and the remainder of the price, which was left in the hands of the pledgees to the credit of the debtor, amounting to about Rs. 41,000, was paid over to the debtor, who used that amount and other amounts in paying off his other pressing creditors in Bombay and thus kept his business going. It was found that the firm of Mehta & Sons had paid a fair price for the diamonds; that though the sales included diamonds not under pledge, the vendee had no knowledge of this fact; it appeared that the debtor had, between the date of the first of these sales in May 1917 to the end of June 1917, made payments to his other pressing creditors to the extent of Rs. 71,000, and had put off other creditors and had kept his business going for some time. The debtor was adjudicated an insolvent on an application filed within three months of the above sales. The Official Assignee applied, on notice of motion, before COUTTS TROTTER, J., sitting in Insolvency, for a declaration that the transactions were void as fraudulent preference under section 56 of the Presidency Towns Insolvency Act (III of 1909), or in the alternative as void under section 55 of the Act, on the

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ground that the sales were not in good faith and for valuable consideration. The learned Judge held that the sales were not void either under section 56 as fraudulent preference or under section 55 of the Act, and dismissed the application. The Official Assignee preferred this Letters Patent Appeal against the judgment.

M. D. Devadoss for the appellant.—The sales are void under sections 56 and 55 of the Presidency Towns Insolvency Act (III of 1909). When a debtor was in a state of insolvency and he paid one creditor and not others who were pressing him for payment, it is fraudulent preference under section 56. The onus is no doubt on the Official Assignee. But he has shown by the evidence let in in this case that there was a fraudulent preference. There was no pressure by Mehta. Some hundis were paid before they became due.

[CHIEF JUSTICE.—You must show that the transfer was with a view to prefer: suppose the insolvent did it to keep the business going or even in his own interest, it will not be a fraudulent preference.]

No, the mere fact that the insolvent imagines he can float his trade is not enough. When a debtor in insolvent circumstances pays one creditor X and not another Y, when not able to pay both, it is fraudulent preference, unless there is pressure or other cause for the transfer. In *Sharp* v. *Jackson*(1) the debtor paid a *cestui que* trust. Pressure negatives 'with a view.'

[NAPIER, J.—Motive, view and intention are three stages. It is the middle stage that is taken by the statute.]

[CHIEF JUSTICE.—BOWEN, L.J., says that there are three meanings that can be attached to 'a view' in the section 48 of the English Act, viz., '*a view*,' '*main view*,' '*the sole view*,' and takes the 'main view' as the rule to be followed.]

When no personal interest, pressure or other motive is proved, it is fraudulent preference. [See *Ex parte Viney: In re Eaton & Co.*(2).] The evidence shows that the proposal came from the insolvent. It was voluntary under the older law. The learned Judge has found that there was no pressure by Mehta. On both grounds, it is voluntary. He wanted to prefer the local Madras merchant (Mehta & Sons) to the Bombay creditors.

(1) (1899) A.C., 419. (2) (1857) 2 Q.B., 16.

Secondly, the transaction was void under section 55 of the Act, as it was not in good faith and for proper consideration as required by section 55. The sale to Mehta is an act of bankruptcy and is in bad faith. [See *The Mercantile Bank of India, Limited, Madras* v. *The Official Assignee, Madras*(1).] Mehta knew that the insolvent could not pay in the ordinary way and that he was selling property which was pledged. Sections 9 and 55 of the Act will make it an act of bankruptcy and hence not one in good faith. Mehta admits that he knew that all the goods were sold.

[CHIEF JUSTICE.—There was no transfer of all his property by the insolvent.]

There must be consideration and good faith. There is no good faith in this case. Mehta says in his evidence that he made no inquiries as to the state of the insolvent's affairs.

Reference was made to the following cases :—*Abdul Kadir* v. *Official Receiver*(2) ; *Ex parte Russel : In re Butterworth*(3) ; *In re Sharp*(4) ; *Shears* v. *Goddard*(5) ; *Ex parte Chaplin : In re Sinclair*(6) ; *Ex parte Johnson : In re Chapman*(7) ; *Ex parte Pearson : In re Mortimer*(8).

The onus in this respect is on the transferee.

It is submitted that the whole transaction was a fraud.

Reference was made on the first point to the following cases :—*Sharp* v. *Jackson*(9) ; *Ex parte Griffith : In re Wilcoxon* (10) ; *Ex parte Hill : In re Bird* (11) ; *Morpeth Rival Council* v. *Bullocks Hall Colliery Company, Limited*(12) ; *Ex parte Viney : In re Eaton & Co.* (13) ; *Official Receiver Ex parte : In re Bell*(14) ; *In re Arnott*(15) ; *In re Jukes : Ex parte Official Receiver*(16).

Nugent Grant, (*D. Chamier* with him) for respondent.—The insolvent sent the sale-proceeds obtained under the transaction with Mehta to the Bombay creditors and carried on his business by keeping it floating. His dominant view was to keep his business floating and it was with that view and not with the

(1) (1916) I.L.R., 39 Mad., 250.
(2) (1913) 20 I.C., 482.
(3) (1882) 19 Ch.D., 588.
(4) (1912) 83 L.T., 416.
(5) (1896) 1 Q.B., 406.
(6) (1884) 26 Ch.,D., 319.
(7) (1884) 26 Ch.D., 338.
(8) (1873) L.R., 8 Ch., 668.
(9) (1899) A.C., 419.
(10) (1883) 23 Ch.D., 69.
(11) (1883) 23 Ch.D., 695.
(12) (1913) 2 K.B., 8.
(13) (1897) 2 Q.B., 16.
(14) (1892) 10 Mor., 715.
(15) (1889) 6 Mor., 215.
(16) (1902) 2 K.B., 58.

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view of preferring Mehta that he sold diamonds to him. He carried on trade after the date of sales to Mehta. It is not a fraudulent preference. Secondly, it is not void under sections 55 and 9 of the Act. It is not a fraud on the bankruptcy law.

Reference was made to *Shears* v. *Goddard*(1), *Ex parte Blackburn* : *In re Cheeseborough*(2) ; *In re Clay*(3).

M. D. Devadoss in reply.—Mehta was a local man and so the insolvent preferred him. Every transaction by which a creditor is given a preference as a fact to others is presumably fraudulent; there are only three exceptions recognized in English decisions in which transfers will be sustained, viz., (1) to recoup a breach of trust by the insolvent, (2) under threats of legal proceedings, (3) where the insolvent *bona fide* believed he could thereby avoid bankruptcy. *Sharp* v. *Jackson*(4) was one of these cases. The decision in *Tomkins* v. *Saffery*(5) is another exception to the rule in *Sharp* v. *Jackson*(4).

WALLIS, C.J.

WALLIS, C.J.—This is an appeal from an order of COUTTS TROTTER, J., dismissing the Official Assignee's application by notice of motion for a declaration that the sale of diamonds by the insolvent on and after the 19th May 1917 to the garnishees T. B. Mehta & Sons was void as a fraudulent preference under section 56 of the Presidency Towns Insolvency Act or in the alternative under section 55 as the sale was not *bona fide* and for valuable consideration. In my opinion the decision of the learned Judge was right on both points. We are not now concerned with the propriety or morality of the insolvent's conduct in obtaining large quantities of diamonds on credit from various firms and pledging them for advances to Nattukottai Chettis and in persisting in this course when he was clearly in insolvent circumstances and had no prospect of paying for them. These are matters to be taken into consideration at another stage. In the middle of May 1917 the insolvent was in very embarrassed circumstances and was unable to meet his obligations as they fell due. He was indebted to the garnishees Messrs. Mehta & Sons, a Madras firm, with whom he had had large transactions, in Rs. 36,062 against which eight hundis were outstanding and also in Rs. 3,000 on general account. Two

(1) (1896) 1 Q.B., 406.
(2) (1871) 12 Eq., 358.
(3) (1896) 3 Mans., 31.
(4) (1899) A.C., 419.
(5) (1878) 3 A.C., 213.

hundis which fell due on the 19th were not presented at his request (exhibit 10, dated 14th May 1917), but a third hundi which fell due on the same day was not met and they began to press him. The insolvent then proposed that the garnishees who were diamond merchants should purchase from him diamonds which were under pledge to various Nattukottai Chettis and apply the surplus after discharging the pledges in satisfaction of the hundis. The diamond market was then rising and Mehta accepted the offer and in the course of five transactions between the 25th May and 12th June purchased diamonds to the extent of Rs. 2,87,000, and in this way obtained payment of the hundis. It is not now disputed that he paid a fair price for the diamonds. An examination of the pledgees' accounts in the course of the case revealed the fact that the purchases by the garnishees from pledgees were larger than was necessary to pay them off out of the surpluses and that the insolvent was paid over Rs. 41,000 by the pledgees as a result of the transactions. The evidence is that this result was obtained by including in the sales, apparently without the garnishees' knowledge, other diamonds which were not under pledge. Any adverse inference that might arise from this fact is negatived by the evidence that between the 25th May, the date of the first of these sales, and his arrest at the end of June, he made payments to the other creditors amounting to more than Rs. 71,000 to meet his more pressing obligations and at the same time put off other creditors. All this shows that he went on trading when in hopelessly insolvent circumstances, not that he entered into the transactions now impugned with a view to prefer these particular creditors. The learned Judge has rightly held that to bring a transaction within the scope of section 56 it must have been entered into with the dominant view of preferring the particular creditor. That construction has recently been criticized in an unreported case—*Nalam Viswanathan* v. *The Official Assignee of Madras*(1) in this Court—as proceeding upon a consideration of cases decided before the section was enacted. Lord Justice BOWEN deprecated this mode of construction in *Ex parte Griffith : In re Wilcoxon*(2) and *Ex parte Hill : In re Bird*(3) and in the latter case expressed the opinion on a careful consideration of the various ways

(1) (1915) 32 I.C., 795. (2) (1883) 23 Ch. D., 69.
(3) (1883) 23 Ch. D. 695.

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in which the language of the section could be construed that the words 'with a view of giving a creditor preference over other creditors' must be read as equivalent to 'with the view,' the real effectual substantial view of giving a preference to the creditor, the word *a* being equivalent to *the*. That construction was accepted and was approved by the House of Lords in *Sharp* v. *Jackson*(1) several years before that section was re-enacted in India in 1907 and again in 1909 and the Indian Legislature must in my opinion have contemplated that that construction would be followed here. In the present case the evidence in my opinion does not show that the insolvent entered into these transactions with the dominant view of 'preferring the garnishees' because, as is suggested, they were Madras creditors, whereas most of the other creditors were in Bombay. The evidence rather shows that he was acting throughout exclusively in his own interests and with a view to keep his business going which he could not do without satisfying the garnishees, creditors on the spot who were pressing him to meet his obligations and were not to be put off with excuses. As regards section 55, the sales now in question were for full consideration and did not amount to an act of insolvency by reason of an intent to defeat or delay creditors or otherwise, and the purchaser had no notice of an act of insolvency. In these circumstances they must be held to have been made in good faith and for valuable consideration and not to be avoided under section 55. The Appeal fails and is dismissed with costs.

NAPIER, J.

NAPIER, J.—This is an appeal from the judgment of COUTTS TROTTER, J., on a motion on behalf of the Official Assignee for a declaration that certain sales of jewels by the insolvent Muthiah Chetty to the firm of T. B. Mehta & Sons are void as not being *bona fide* transactions and further as constituting a fraudulent preference of that firm in that the proceeds were largely utilized for discharging certain promissory notes given by the insolvent to the firm. The insolvent was a diamond merchant in a large way of business in Madras, purchasing diamonds here to a certain extent and to a much larger extent in Bombay. At the time of the sales he was in fact hopelessly insolvent. The sales covered a period between 25th May and 12th June 1917 and were completed in five transactions, on 25th May, 2nd June, 7th June, 8th June and 12th June. Nearly all

(1) (1899) A.C., 419.

the diamonds sold were under pledge to various lenders and the sales purported to be, according to the evidence of the garnishee, of those diamonds only, the garnishee buying the diamonds at an agreed price, paying the amount due on the pledge and crediting the balance as against promissory notes, with the result that the whole of the promissory notes and an amount due on general account to the garnishee were discharged, while much heavier debts on promissory notes to other creditors were left undischarged. The learned Judge has found that the sales are not void for fraudulent preference.

Mr. Devadoss has attacked these findings as being based on an erroneous view of the law and also contends that on the true view of the facts they cannot be upheld. His contention on the law was as follows : that every transaction by which a creditor is given a preference is presumably fraudulent and that there are only three conditions under which such transactions will be sustained, namely, where the transaction is to recoup a breach of trust, where the transaction is compelled by threats of legal proceedings and where the insolvent *bona fide* believed he could avoid bankruptcy and entered into the transaction for that purpose. In my opinion, there is no warrant for this contention. All that Mr. Devadoss has been able to do is to invite our attention to cases in which these conditions have been held sufficient to establish that there was no fraudulent preference in the particular case. I entirely agree with what fell from the learned Chief Justice at the beginning of the argument that what we have to do is to construe the act with the assistance of decisions of eminent Judges in England on similar words in the English statute The learned trial Judge, although he does not refer to the language of the section, starts with this proposition that he has to consider what was the dominant motive of the insolvent in carrying through this transaction. I agree that this is the real consideration in the case, but I think it advisable to state how this proposition is arrived at.

The Act to be construed is the Presidency Towns Insolvency Act (III of 1909) and the important sections are section 9, which defines an Act of Insolvency, section 55, which avoids certain transactions made within two years of insolvency, section 56 which declares certain transactions within three months of the insolvency fraudulent and void, and section 57 which

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protects certain transactions. The corresponding English Act is the Bankruptcy Act of 1883, and the corresponding sections are sections 4, 47, 48 and 49. Dealing first with fraudulent preference, the words of section 56 with which we are concerned are :—

"Every transfer of property, every payment made, by the person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over other creditors, shall, if such person is adjudged insolvent, on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the Official Assignee."

The language of section 48 of the English Act is *mutatis mutandis* identical. The first thing to be noted about this section is that it does not say that every transfer of property or payment by such a person with the effect of giving the creditor preference is fraudulent and there can be no doubt that, if the legislature had intended to avoid all transfers and payments in favour of a particular creditor without considering the motive or the object of the insolvent, it would have used some such words as the above or omitted the words 'with a view, etc.' We have therefore to construe the words 'with a view of giving that creditor a preference' as an essential requirement for a fraudulent preference. The learned Judge in the course of his judgment has referred with disapproval to an *obiter dictum* of a Judge of this Court in a case not reported in the authorized reports—*Nalam Viswanathan* v. *The Official Assignee of Madras*(1). I do not think that COUTTS TROTTER J.'s criticisms are quite justified on the language of my learned brother, though I am not prepared to agree with some of the observations to be found in that language. I must say also that I think the learned Judge's language is useful as drawing the attention to the fact that we have to construe a particular statute and not to apply principles founded on words which are not in the particular statute. The true rule of construction was laid down in 1891 by the House of Lords in the well-known case of the *Bank of England* v. *Vagliano Brothers*(2) and approved of by the Privy Council in *Narendranath Sircar* v. *Kamal Basini Dasi*(3). I am not certain that this rule has always been borne in mind

(1) (1915) 32 I.C., 795. (2) (1891) A.C., 107.
(3) (1896) I.L.R., 23, Calc., 563.

in decisions on questions of fraudulent preference in cases in England, and I specially refer to a decision which was pressed on us by Mr. Grant, *Ex parte Blackburn: In re Cheeseborough*(1) from which, so far as the process of reasoning is concerned, I must respectfully dissent. We have however the guidance of very eminent Judges in England in cases where the language of the English statute was critically analysed, and I propose to refer to a few of them.

The first case which is very much in point is in *Ex parte Griffith : In re Wilcoxon*(2) and especially the language of BOWEN, L.J., at page 74. He there refers to the fact that in judicial decisions since the Bankruptcy Act there has been a tendency among Courts to discuss the question whether the Act had altered the old law and introduced an entirely new law with the result that the Court has been drawn into questions of pressure and volition and into motive of a motive, whatever that may mean, and he lays down that the true method is to go back to the words of the statute and be guided by them. Here we have a very eminent Judge applying the principle which was subsequently laid down in the *Bank of England* v. *Vagliano Brothers*(3). The next is *Ex parte Hill : In re Bird*(4). In that case the same learned judge speaking of section 92, the corresponding section of the Bankruptcy Act of 1869, says as follows :—

"Whether that section has or has not altered the old law is not a matter that need be decided, though there was considerable authority for saying that it has not. But however that may be, we have to look to the words of section 92, and they are 'with a view of giving such creditor a preference over other creditors'."

He then considers the meaning of the words 'a view' and says :

"I should prefer keeping to the word 'view' instead of 'motive,' though in nine cases out of ten the two words may come to the same thing."

He declines to accept the suggestion that the words 'a view' mean 'sole view' on the ground that if the legislature had so intended it would have used the word 'sole'. He is of opinion that the word 'a' is equivalent to 'the' and considers that 'the view' means the dominant and substantial view.

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(1) (1871) 12 Eq., 358.
(2) (1883) 23 Ch.D., 69.
(3) (1891) A.C., 107.
(4) (1883) 23 Ch.D., 695.

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These two cases were followed and applied by a divisional Court in *Ex parte Official Receiver : In re Bell*(1). That was a case where pressure was relied on as taking the case out of the statute and WRIGHT, J., laid down that in such a case it must be found that pressure was the substantial ground of the payment being made, which is of course equivalent to saying that the intention to prefer would not be the substantial ground. VAUGHAN WILLIAM, J., says :

"The law is well established now that one has to ascertain in each case what was the dominant motive which operated on the bankrupt's mind ;"

and in another part of the judgment :

"Was the substantial, effectual, or dominant view with which the debtor made the payment a preference of that creditor ?"

The next case is the decision relied on by the learned Judge is *Sharp* v. *Jackson*(2). There the learned Lord Chancellor endorses the view of Lord ESHER in the Court of Appeal in the same case that the question depends not on the mere fact that there has been a preference but also on the state of mind of the person who made it, and that it is not sufficient to say that, the natural consequence of the act being to prefer, the intention to prefer follows. This decision is specially important, as it has been treated in subsequent cases as endorsing the correctness of the decision in the Court of Appeal in the same case. That *is sub-nom*, *In re The Trustee of the Property of New, Prance and Garrard* v. *Hunting and others*(3). I have already referred to one extract from Lord ESHER'S judgment. Other passages are as follow :

"What had he obviously in view when he executed this deed ? It seems to me clear that he made this conveyance, not with the 'intention', or 'view' or 'object' or whatever it may be called, of preferring these persons, but for the sole purpose of shielding himself. Under these circumstances what he did is not a fraudulent preference within the Act."

A.L. SMITH, L.J., says :

"I have always understood 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 by preferring others, or some other motive."

(1) (1892) 10 Mor., 715. (2) (1899) A.C., 419.
(3) (1897) 2 Q.B., 19.

CHITTY, L.J., says:

"I ask myself what was really the view which Prance had in making this conveyance. Was it to prefer these particular trust estates to other creditors? No, it was to protect himself against the charges hanging over him."

There can be no doubt that the Court of Appeal in this case were applying the tests laid down in *Ex parte Griffith: In re Wilcoxon*(1) and *Ex parte Hill: In re Bird*(2) and in consequence of this unanimity of the Court of Appeal and its endorsement by the House of Lords, WRIGHT, J., in *In re Blackburn, Buckley's Case*(3) said as follows:

"Ever since the decision in *New, Prance and Garrard's Trustees* v. *Hunting*(4), which has since been affirmed by the House of Lords, sub-nom *Sharp* v. *Jackson*(5) so little difficulty has been felt by gentlemen who practise in bankruptcy matters that questions of fraudulent preference comparatively seldom now arise."

It is clear on the authority of these cases that no hard and fast rule can be laid down as to what facts will take a particular case out of the statute and it is not open to us to hold, as Mr. Devadoss would wish us to do, that certain circumstances only have been accepted by the Courts for this purpose and no other circumstances will suffice. Mr. Devadoss relied on a decision in *In Re Lake*(6), a breach of trust case. But this case is really against him, for there WRIGHT, J., finding that there had been several breaches of trust of which only one was made good, held that there was a fraudulent preference. The Court of Appeal, it is true, found on the facts that it was not. But the learned Judges did not lay down, and I venture to think, could not lay down, a definite rule that where there are breaches of trust and one is made good, there cannot be a fraudulent preference. Indeed, on those facts, I would myself prefer the finding of WRIGHT, J.

[His Lordship then dealt with the facts and found that the insolvent was endeavouring to keep his business going as long as possible.]

The learned trial Judge has relied on *In re Arnott*(7), and our attention has also been invited to *Lomax* v. *Buxton*(8). In

(1) (1883) 23 Ch D. 69.
(2) (1883) 23 Ch. D. 695.
(3) (1899) 2 Ch. 725 at p. 728.
(4) (1897) 2 Q.B., 19.
(5) (1899) A.C, 419.
(6) (1901) 1 K.B., 710.
(7) (1889) 6 Mor., 215.
(8) (1871) 6 C.P., 107.

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both these cases the insolvent had procured money for the purpose of carrying on business and the transaction was upheld. I do not myself think that we require any authority because, as indicated above, each case should be decided on its own facts, the sole question being 'what was the object which the insolvent had in view?' I can come to no other conclusion but that these transactions with Mehta were put through in the hope of being able to continue business and for the purpose of raising money with which to satisfy Meenasche and get further consignments of diamonds from him. I therefore agree with COUTTS TROTTER, J., that these transactions did not amount to a fraudulent preference.

The remaining question can be shortly disposed of. It follows from the above finding that the transfer was not an act of bankruptcy under section 9, clause(*b*). With regard to section 55 which invalidates transfers not made in good faith and for valuable consideration within two years of insolvency, it has been established by the evidence of an expert witness that the price paid by the garnishee for the jewels was only 4 per cent less than the valuation he would put on them. It is hardly necessary to say that such a variation cannot indicate anything more than a difference of opinion. There is no evidence that the garnishee knew that the insolvent was carrying through this transaction for any other purpose than that which he (the garnishee) thought, namely, discharging the liability to him, or that he was getting more money than was required for discharge of the pledge. Indeed Mr. Devadoss conceded this. There was therefore no want of good faith within the ordinary meaning of the term. It is true that the words 'in good faith' have been held both in England and in this Court to require that the transaction should not be in fraud of the bankruptcy laws. But as there has been no fraudulent preference, it follows that there has been no fraud of the bankruptcy laws. In these circumstances, I do not think it necessary to consider the case of *Shears* v. *Goddard*(1), and other English cases on the point. I therefore agree with the learned Chief Justice in dismissing the Appeal with costs.

K.R.

(1) (1896) 1 Q.B., 406.