

giving such creditor a preference over other creditors, it shall, with respect to any proceeding taken to impeach the transfer within sixty days thereafter, or if the debtor within sixty days after the transfer makes an assignment for the benefit of creditors, be presumed *prima facie* to have been made with the intent aforesaid, and to be an unjust preference within the meaning of the Act, whether the transfer was made voluntarily or under pressure. (Cap. 147, sec. 2 (1), (2), (3), (4).)

This provision of the Statute leaves the doctrine of pressure to still have full operation and effect save only in those cases in which a transfer of property has the effect of giving a creditor a preference over other creditors, and where proceedings have been taken to impeach such transfer within sixty days thereafter, or if the debtor within sixty days after such transfer makes an assignment for the benefit of his creditors: *Beattie v. Wenger*, 24 App. R. 72.

A question arose with regard to the construction of the original Statute (54 Vic. Cap. 20), whether the presumption of intent which in certain cases was raised under the provisions of that Statute was rebuttable or irrebuttable. The Statute provided that *if the transaction has the effect of giving a creditor a preference it shall under the circumstances therein mentioned be presumed to have been made with the intent to prefer and to be an unjust preference whether the same be made voluntarily or under pressure.*

It appears to be quite clear that the presumption mentioned in the Statute arises only in the case of an insolvent debtor preferring one or more of his creditors, and that it has no application to the case of such a debtor making a transfer of property by way of sale or settlement which has the effect of defeating, delaying or prejudicing his creditors, unless the purchaser be a creditor who retains his claim out of the purchase money and thereby obtains a preference, because the Statute provides that under the circumstances therein mentioned the transaction shall be presumed to be an *unjust preference*, "*whether the same be made voluntarily or under pressure.*"

Mr. Justice Maclellan holds that the presumption in question is aimed solely at the doctrine of pressure, and that the presumption does not arise with reference to a transfer which has the effect of preferring a creditor, but which may be supported upon some other doctrine than that of pressure: *Lawson v. McGeoch*, 20 App. R. 464.

In this case, Mr. Justice Osler holds that the presumption is