sec. 2 (*c*), of the Bank Act, 3 & 4 Geo. V. ch. 9 (D.), because it purported to be made as security for a past indebtedness of the optical company, but was in fact given as security for a future advance; but in fact the document represented the real transaction to be entered into.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT. APRIL 3RD, 1917.

*CLIFTON v. TOWERS.

Assignments and Preferences—Unjust Preference—Chattel Mortgage — Insolvency — Knowledge — Intent — Instrument Executed within 60 Days before Assignment for Benefit of Creditors — Presumption — Rebuttal — Evidence — Onus — Assignments and Preferences Act, R.S.O. 1914 ch. 134, sec. 5 (4).

Appeal by the defendant from the judgment of BRITTON, J., 10 O.W.N. 224, 11 O.W.N. 11.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

W. S. Brewster, K.C., for the appellant.

J. D. Bissett, for the plaintiff, respondent.

HODGINS, J. A., read the judgment of the Court. He said that the question involved was, whether the respondent had successfully rebutted the statutory presumption under the Assignments and Preferences Act, R.S.O. 1914 ch. 134, sec. 5, sub-sec. (4), or whether the giving of the chattel mortgage in question to him was null and void as an unjust preference. Sub-section (4) deals with a transaction, such as is mentioned in sub-secs. (1) and (2), which results in preferring a creditor. If it takes place within 60 days of an assignment, there are two presumptions—one that the transaction is in fact an unjust preference, and the other that it was so intended. If, therefore, there be insolvency, or inability to pay debts in full, or consciousness that insolvency is pending, the creditor must, in order to discharge the statutory onus, shew that there was no intent to prefer unjustly. To rebut the intent, it is not enough to shew pressure.