

to the debtor's credit or to avoid the statutory presumption, the agreement to give the security is of no avail: *Webster v. Crickmore*, 25 App. R. 97.

A chattel mortgage given by an insolvent debtor to his creditor, by way of security, less than sixty days before a general assignment for the benefit of creditors, cannot be sustained as against the creditors' assignee, even though it was given pursuant to a prior agreement that on default of payment or on demand the debtor would give such chattel mortgage, which agreement was made more than sixty days before the assignment; and such a mortgage will not be validated by pressure at the time of procuring the agreement, if both parties then knew of the debtor's insolvency, and if the creditor took his security in that form for the purpose of evading the provisions of the Act as to the effect of an assignment within sixty days: *Breeze v. Knox*, 24 App. R. 203.

INSOLVENT CIRCUMSTANCES.

The phrase "insolvent circumstances" as used in the Act means nothing more than "unable to pay his debts in full," and both expressions refer to the condition in which a debtor is placed when he has not sufficient property subject to execution to pay all his debts, if that property were sold under legal process at a sale fairly and reasonably conducted: *The Dominion Bank v. Cowan*, 14 O. R. 465; and see *Warnock v. Kloeffer*, 14 O. R. 288; 15 App. R. 324; 18 S. C. R. 701.

WHO IS A CREDITOR THAT MAY BE ATTACKED?

The Court, in defining the position of a creditor whose preference was forbidden by the Act, held that a surety for an insolvent debtor who has not paid the debt for which he is surety, is not a creditor whose preference is forbidden by the Act: *Hope v. Grant*, 20 O. R. 623; *Campbell v. Roche*, 18 App. R. at p. 656, and cases there cited.

This led to an amendment of the Act whereby it is provided that such creditor shall include any surety and the endorser of any promissory note or bill of exchange, who would, upon payment by him of the debt, promissory note or bill of exchange, become a creditor of the person giving the preference. (55 Vic. Cap. 25; now R. S. O. 1897, Cap. 147, sec. 2 (5)).

Where a security is given by a trustee to his *cestui que trust* for trust funds which have been misappropriated by the trustee,