

to a creditor by an insolvent debtor to secure payment of one of his past debts, together with a small present advance, and the effect was to pay that creditor in full, and thereby give him a preference over other creditors, the mortgage was held to be unimpeachable, *because the mortgagee did not know of the mortgagor's insolvency when he took the mortgage: Gibbons v. McDonald*, 19 O. R. 291; 18 App. R. 159; 20 S. C. R. 587.

In *Burns v. Mackay*, 10 O. R. 167 (approved of in *Johnson v. Hope*, 17 App. R. 10), it was held that even when there was no present advance, and the mortgage was given to a creditor by an insolvent debtor wholly for a past indebtedness, yet the mortgage could not be successfully impeached by a creditor, unless he shewed that both parties thereto were united in a fraudulent intent. See also *McRoberts v. Steinoff*, 11 O. R. at p. 372.

Where, however, a conveyance is voluntary, it is only necessary for the creditor attacking the same to shew fraudulent intent on the part of the grantor: *Oliver v. McLaughlin*, 24 O. R. 41.

VALUABLE SECURITY GIVEN UP BY CREDITOR IN CONSIDERATION OF PAYMENT.

By section 3 (4) it is enacted that in case *any payment* has been made to the creditor of an insolvent debtor which is void under the Act, and any *valuable security* was given up by the creditor in consideration of the payment the creditor shall be entitled to have the security restored, or its value made good to him before, or as a condition of the return by him of the payment so improperly made.

The liability of the endorser of a promissory note made by the debtor and held by the creditor as security for his claim is not a "valuable security" within the meaning of this sub-section; what is there referred to is some property of the debtor which has been given up to him or of which he has had the benefit: *Beattie v. Wenger*, 24 App. R. 72.

By section 3 (5), it is enacted that the Statute shall not affect *any payment of money* to a creditor, where such creditor by reason or on account of such payment, has lost or been deprived of, or has in good faith given up, any *valid security* which he held for the payment of the debt so paid unless the value of the security is restored to the creditor, nor shall it apply to the substitution in good faith of one security for another security for the same debt, so far as the debtor's estate is not thereby lessened in value to the other creditors.