

subsequent creditors, purchasers and mortgagees. This mortgage was therefore given in pursuance of an agreement to contravene the statute, and was therefore, on grounds of public policy, void ab initio."

In *Ex parte Kilner*, Buck. 104, the doctrine does not seem to be carried quite so far but *Baggalay, L.J.*, said he thought it clear from the way in which the principle was stated by Lord Justice Mellish that it must be for the Court in each case that comes before it to take into consideration all the surrounding circumstances and to see "whether, having regard to these circumstances, there is an intention to commit an actual fraud against the general body of creditors." The actual fraud referred to in these cases is, I take it, either the statutory fraud of obtaining an unjust preference or the actual fraud of inducing persons to become creditors on the faith of an apparent solvency and prosperity which are unreal. The "surrounding circumstances" in the present case would abundantly support the conclusion of the trial Judge that this was the intention with which the bill of sale was taken, and was by the agreement of the parties retained for eighteen months in the hands of the solicitor.

I am unable to agree with the trial Judge, however, as to the judgment. The firm of "*Betts & Co.*" certainly owed Morrison the sum of seventeen hundred dollars. The note for \$1,700 had never been discharged. It was a continuing security and the creditor had the same right to sue the defendant on his claim as the plaintiff or any other creditor. If the transfer of the note from Charman is set aside and Morrison is made to account for all moneys received on account of this note, and turn over to the estate all securities held by him in connection with the transfer to Charman, I cannot see that the creditors will not have received all that is coming to them. No question is made as to the value of the goods being greater than the amount for which they were so transferred. It is conceded that the estate has suffered only to the extent of the amount for which the goods were sold and the money for them received by Morrison. The creditors cannot have their cake and eat it. If they realise the amount of the Charman note, Morrison must hold his judgment, except, in so far as it has been reduced by payments other than those received in connection with the Charman transaction. We are not informed as to the extent or amount of such credits.