

1862. protection of creditors against fraudulent conveyances, or is void at common law?

Bank of
Toronto
v.
Eccles.

Whatever may have been held in cases coming only under the statute of 27 Elizabeth, respecting voluntary conveyances being necessarily and as a legal inference void against subsequent purchasers, upon which point the language of judges has not been always consistent, (a) there is no doubt, I think, that under the statute 13 Elizabeth, ch. 5, a creditor resisting a conveyance upon the ground that in the language of that act, "it is feigned, covinous, and fraudulent, and contrived of malice, fraud, covin, collusion or guile, to the end, purpose, and intent to delay, hinder or defraud creditors of their just and lawful actions, debts," &c., must shew something more than the mere want of adequate and valuable consideration; because a man acting honestly and in good faith, and having no design to delay or defeat creditors, is not disabled by that statute, or un-
Judgment. able at common law to make a voluntary gift of his lands; or at least it may be said that the jury must be satisfied of something more than merely that the deed was made without a valuable consideration, before they can find it to be fraudulent as against creditors.

And if, as against persons not becoming creditors subsequent to the deed, but who were creditors before it was made, the jury cannot properly be told that in the absence of other evidence they may treat the total absence of consideration, or a grossly inadequate consideration, as *prima facie* leading to a conclusion of fraudulent intent, then it must on the other hand be open to the person claiming under the deed to uphold it against the imputation of fraud, by giving evidence *dehors* the deed of the intent and purpose for which it was really made.

The case of *Gale v. Williamson*, (b) cited in the

(a) Roberts on Fraudulent Conveyances, ch. 1, sec. 4 & 5.
(b) 8 M. & W. 405.

judgm
point
conve
made
intend
object
the as
withou
deed o

This
statute
and sti
of them
upon th
honestl
tors.

Then
have n
siderati
the only
be at li
poses an
is settle
can be a
seems to
the arra
execution
declarati

The ex
ing the q
upon as t
paration
by creati
and which
regarded
tion that