

In case the assignment is that of the lessee the landlord would have preference claim for rent for one year last previous to, and three months following the execution of such assignment and thereafter as long as the assignee shall retain possession of the premises.

528 Fraudulent Preference. Every gift, conveyance, assignment or transfer of any property, real or personal, made by a person at a time when he is unable to pay his debts in full, shall, as against his creditors to the extent that they are hindered, delayed or prejudiced, be considered a fraudulent preference and utterly void. Therefore any chattel mortgage given on the eve of making an assignment, either forced or voluntary, could be set aside by an action brought for that purpose. It would be valid as between the parties themselves, but not as to creditors.

Simply being in debt when a man transfers any of his property, either to a creditor, wife or relative, does not make the transfer fraudulent so long as he is still able to pay his debts in full. "Fraudulent intention" must be shown by the creditors before a sale or transfer of real or personal property can be cancelled. A large payment to one creditor or transfer of certain property just on the eve of assignment for the benefit of creditors, would have the appearance of a fraudulent intention to defraud other creditors and would be set aside if assailed.

Transfer of real or personal property by a person when solvent or before going into business cannot be set aside if the person subsequently becomes insolvent, unless it can be shown by the creditors that it was part of a scheme to defraud.

Goods may also be brought into a dealer's place of business in the regular way right up to the time he may be forced to make an assignment without having any taint of fraud in the transaction on the dealer's part, unless he was questioned by the wholesale house concerning his financial condition and misrepresented that position.

In Ontario a chattel mortgage or other transfer of property given within 60 days of insolvency may be set aside, but an overdue debt of not less than \$40, must be due a creditor before he can take legal proceedings to set aside a sale or gift or assignment, neither can he combine his claim with another creditor so as to make it large enough, and then take proceedings.

In Quebec suit to set aside a fraudulent conveyance may be brought any time within one year from the time when the creditor discovered the fraudulent transaction, and the party may be made to restore the property or its value for the benefit of the creditors.

In Manitoba action must be brought within 60 days to set aside such fraudulent preference.

In Newfoundland such transfer made by a debtor within two months of his declared insolvency is null and void if the party receiving same had knowledge of the insolvency.

In British Columbia all payments made within ten days of assignment on account of a pre-existent debt are void except wages, not exceeding three months' tax and water rates.