

in evidence the judgment which he has obtained against the transferor, for although that judgment is conclusive to establish as against the transferor and third persons (including the transferee), that the plaintiff is a creditor of the transferor, yet it is no evidence as against the transferee of any of the allegations upon which that judgment was based; it is evidence that on the date when judgment was entered the transferor was indebted to the plaintiff, but it is no evidence of the nature of the indebtedness or the time when it was incurred, and it is usually necessary for the plaintiff to adduce evidence of these facts as against the transferee in order to establish that the transfer was fraudulent as against himself: *Allan v. McTavish*, 28 Gr. 539; 8 App. R. 440.

RELIEF GRANTED TO EXECUTION CREDITOR AND TO SIMPLE CONTRACT CREDITOR.

Where a creditor attacks a transfer as fraudulent he may shew that he is an execution creditor, in which case he may maintain his action in his own name alone, and the effect of a successful judgment will be to set aside the fraudulent transfer and leave his execution to operate thereon; or, if he be not an execution creditor, he must sue on behalf of himself and all other creditors, and his relief will be confined to setting aside the transfer, leaving him to resort to some independent proceeding to obtain execution against the property: *Oliver v. McLaughlin*, 24 O. R. 41.

A simple contract creditor may, on behalf of himself and all other creditors, bring an action for a declaration of the invalidity of his debtor's assignment or transfer, even though at the time of bringing such action his debt be not yet due: *Macdonald v. McCall*, 12 App. R. 593.

It would appear that the proposition contained in *Oliver v. McLaughlin*, that a simple contract creditor can obtain no further relief in a fraudulent conveyance action than a mere declaration of the invalidity of the conveyance, leaving him to resort to an independent proceeding to obtain execution against the property, must be confined to cases where the plaintiff's claim is not yet due and payable, because where the plaintiff's claim is due and payable there is a well-settled practice of the Court to give him judgment for the recovery of his claim, which judgment goes on to provide for the taking of an account of the claims of all creditors, and in default of payment of those claims, for a sale of the lands in question one year after the date of the judgment, unless it should appear that any creditor other than the plaintiff has a