

him under his execution, such creditor has no legal right and no equity to an account, or to follow moneys received by the assignee or paid by him under such assignment, in respect to which he has not secured a prior claim by taking the necessary proceedings to make them exigible.

(In the Supreme Court of Canada.)

Cummings & Sons v. Taylor, 28 S.C.C. 337.

12. Payments to preferred creditors—May not be recovered—Though under fraudulent conveyance.]—Held (in the Supreme Court of Canada), in an action to have a deed of assignment set aside, by creditors of the grantor, on the ground that it was void under the Statute of Elizabeth, neither moneys paid to preferred creditors nor trust property disposed of in good faith by the assignor or persons claiming under him, can be recovered, nor can persons holding under the deed be held personally liable for moneys or property so received by them. *Cox v. Worrall*, 26/366, overruled, *pro tanto*.

Taylor v. McKinnon, 29/162.

Taylor v. Cummings, 27 S.C.C. 589.

See also FRAUDULENT CONVEYANCE, 10.

13. Fraudulent conveyance.]—Preference in assignment larger than amount due. Though the full amount afterwards become due.

See FRAUDULENT CONVEYANCE, 8.

14. Accommodation indorsers—Preference where bills have not matured. May be preferred.

See FRAUDULENT CONVEYANCE, 9.

15. First preference to assignee's firm.] Held, by the Supreme Court of Canada, that an assignment is void under the Statute of Elizabeth as tending to hinder and delay creditors, if it gives a first preference to a firm of which the assignee is a member, and provides for an allowance of interest on the debt of such firm until paid, and the assignor is to continue in the same control of the business as he previously had, though no

one of these provisions taken singly would have that effect.

A provision that the assignee "shall only be liable for such monies as shall come into his hands as such assignee, unless there be gross negligence or fraud on his part," will also avoid the instrument under the Statute of Elizabeth.

Authority to the assignee not only to prefer parties to accommodation paper, but also to pay "all costs, charges and expenses in consequence" of such accommodation paper, is a badge of fraud.

Kirk v. Chisholm, *McPhie v. Chisholm*, 28/111, 26 S.C.C. 111.

16. Preference to assignee—Indefinite accounts—Combination of facts.]—In 1887, G. having taken administration of her deceased husband's estate and paid his debts, continued to carry on his business and to employ, as he had done, her son, defendant H., as clerk and manager, relying solely on him, being herself almost illiterate and knowing nothing of the details of affairs.

The arrangement between G. and H. appears to have been rather indefinite, but it appeared in a general way that G. was to receive her living only, H. \$40 per month and board. H. had not been in the habit of drawing all that was due him.

Judgment for a large amount having been recovered by plaintiffs, G. made a general assignment to H., preferring him for a large sum. In an action to set this assignment aside as fraudulent, it appeared that charges and entries going to show the details of G.'s obligation to H., for which he had been preferred, were not made until the eve of assignment, and that some entries had been made by estimating and averaging.

Held, setting the assignment aside, that each case of this sort must be judged by itself, and though an isolated fact is not sufficient in itself to void a conveyance, yet a combination of such facts may irresistibly lead to that conclusion.

Delong v. Gillis, 31/61.

17. Trust for payment of debts—Cannot be invoked by third persons.]—Cer-