

man, though the mortgage was taken in the name of the defendant, his brother, Adam Uffelman; and that the purpose of the transaction, and the effect of the mortgage, was to delay all other creditors of the company and to give to Jacob Uffelman, who was a creditor of the company, an unjust preference over all other its creditors. The findings are not inconsistent; the scheme was intended to stave off all other creditors in the hope that the company might recover itself, but, if not, that the defendant would have his preferential security; and, therefore, was, in my opinion, a transaction in violation of both the Statute of Elizabeth and the provincial enactment against unjust preferences.

The only substantial question in the case, as it seems to me, is as to character and extent of the relief which should be given to the plaintiffs. When the mortgage was given, Jacob Uffelman was a guarantor of the Merchants Bank of Canada, who were creditors of the company, and who had security to a certain extent for their claims against the company, to the benefit of which Jacob Uffelman, as such surety, was entitled; by the transaction in question the claims of the bank were all paid off, and so Jacob Uffelman was released from his liability as surety. In these, and the other, circumstances of the case, the plaintiffs are entitled to have the transaction in question wholly set aside; but, in my opinion, it does not follow from that that Jacob Uffelman is also to lose the rights which he had against the company at the time of the carrying into effect of the impeached transaction. Why should he? What right have the plaintiffs at common law, under the Statute of Elizabeth, or under the provincial enactment, beyond the removal of the fraudulent security out of their way? The only penalty which the Courts can impose is that provided for in the Statute of Elizabeth; and that is not sought in this action. The parties should, in my opinion, be put in the same position as if the impeached transaction had never taken place; and that, as I understand him, was the position finally taken by Mr. Secord, in his argument of this appeal.

I may add that the fact of the giving of value for an impeached security, whilst entitled to great weight on the question of fact whether the intention was to defeat, delay, or hinder creditors, cannot, under the provincial enactment, save the transaction, if in truth made with such intention.

I would allow the appeal to the extent of restoring the judgment directed to be entered at the trial, and would dismiss it in other respects: the defendant should have the general costs