

this security cannot be set aside as a fraudulent preference, because a trustee and his *cestui que trust* do not stand in the relation of debtor and creditor, within the meaning of the Statute: *Molson's Bank v. Halter*, 18 S. C. R. 88; *Ex p. Taylor—Re Goldsmid*, 18 Q. B. D. 295; *Ex p. Stubbins*, 17 Chy. D. 58; *New, Prance, etc. v. Hunting*, 1897, 2 Q. B. 19; *Halwell v. Tp. of Wilmot*, 24 App. R. 628.

WHO IS A CREDITOR THAT MAY MAKE AN ATTACK ?

A plaintiff may establish his status as a creditor by shewing that there is an implied contract on the part of the insolvent debtor to indemnify the plaintiff against a mortgage on lands conveyed by the plaintiff to the debtor: *Oliver v. McLaughlin*, 24 O. R. 41.

A mortgagee is not a creditor who can attack an alleged fraudulent transfer made by his mortgagor, unless he first establishes by evidence that the mortgaged property is an insufficient security for payment of his claim: *Clark v. Hamilton, etc., Society*, 9 O. R. 177; *Crombie v. Young*, 26 O. R. 194.

A person who has a right of action against an insolvent debtor for tort is not a creditor who can maintain an action under our Statute to impeach a transfer of property made by the debtor: *Ashley v. Brown*, 17 App. R. 500; and see *Cameron v. Cusack*, 17 App. R. 489; but such a person can maintain such an action under the Statute of Elizabeth, for the latter Statute is not, like our Provincial Statute, limited in its operation to the claims of creditors only, but it is a Statute for the avoiding of fraudulent conveyances, etc., contrived to "delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures," etc. See *Ashley v. Brown*, 17 App. R. at p. 503; and *Gurofski v. Harris*, 27 O. R. 201; affirmed on appeal, 23 App. R. 717.

It follows, therefore, that one who has obtained a judgment in an action for tort cannot maintain an action to set aside a transfer of property made by the judgment debtor previous to the obtaining of the judgment and which has the effect of preferring another creditor, for he has no status to maintain an attack under our Provincial Statute, and he cannot maintain an attack under the Statute 13 Eliz., because that Act does not forbid the preferring of one creditor to the prejudice of another: *Gurofski v. Harris*, 27 O. R. 201; affirmed on appeal, 23 App. R. 717; and see *Montgomery v. Corbit*, 24 App. R. 311.