under the Insolvent laws and fraudulent under the Stat. of Eliz., Dietus v. Fuss, 8 Md. 148.

In McCall v. Woodward, 4 Gill, 128, the trusts of a deed made by the partners of a firm conveying all their property were, after paying expenses and commissions, 1°, to pay a certain foreign judgment creditor; 2°, to pay all small debts under $100; 3°, to pay such creditors, as should assent to the terms of the deed and execute releases of their claims, 25 per cent. of the principal amount due them for goods purchased, then borrowed money and accommodation notes and other confidential engagements of the firm due them, then the balance due them in full; 4°, to pay all other creditors, and 5°, the surplus, if any, to pay to the grantors. This deed was held valid by a divided Court, Dorsey and Martin JJ. being against, and Magruder and Chambers JJ. for the validity of the deed.

The question again came up in Albert v. Winn & Ross, 7 Gill, 446. There a debtor conveyed all his property, except a particular parcel which he had been enjoined from conveying, in trust, for the payment of particular creditors named in a schedule to the deed, next to the payment of such of his business or other creditors as should within a little over sixty days execute releases, then to the payment of creditors generally, and the deed contained a covenant to convey the excepted parcel when the injunction should be removed. The deed was held void, by Dorsey, Martin and Frick JJ., Magruder J. dissenting. In White, Warner & Co. v. Winn & Ross, cited in Kettlewell v. Stewart, 8 Gill, 499, Ch. J. Taney held this very deed good.

The next case was Kettlewell v. Stewart, 8 Gill, 472. The trusts of the assignment in that case were, 1°, to pay a particular mortgage debt and interest, and 2°, to pay all creditors who should release within thirty days, and 3°, to pay all other creditors. *And here the deed was held **394** good by Magruder, Chambers and Spence JJ. against Martin and Frick JJ. Dorsey, the then Chief Justice, did not sit in the case. The Court therefore was equally divided on the question of the validity of such deeds. Chambers, Magruder and Spence JJ. being for, and Dorsey C. J., Martin and Frick JJ. being against sustaining them. But in Green v. Trieber, 3 Md. 12, the Court announced that they would follow the law as laid down in McCall v. Woodward and Kettlewell v. Stewart, and such preferences in deeds exacting releases have since been supported, and are expressly made valid by Code, Art. 48, sec. 13, 1854, ch. 193, s. 13.[42] It has been observed, however, that they are only tolerated in equity, and throw a cloud of suspicion over the deed, American Exchange Bank v. Inloes, 7 Md. 380. Nor do proceedings in a Court of Equity upon the deed of trust oust the jurisdiction of Courts of Law to declare it void on the application of creditors, who were not parties to the equity proceeding, *ibid.* And if the Court can see that the deed is fraudulent on its face, the question of fraud need not be left to the jury, *ibid.* and Green v. Trieber *supra.*

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[42] Mackintosh v. Corner, 33 Md. 598; Whedbee v. Stewart, 40 Md. 421. This provision, however, entirely disappeared from the law in the repeal and re-enactment of this section by the Act of 1880, ch. 172. See Code 1911, Art. 47, sec. 14.