

JOSHUA J. ATKINSON,
 PERMANENT TRUSTEE OF
 WILLIAM C. SPINDLER
 vs.
 JAMES PHILLIPS, SEN'R. ET AL.

DECEMBER TERM, 1849.

[CONVEYANCE VOID AS TO CREDITORS—RIGHT OF PERMANENT TRUSTEE TO FILE A BILL TO VACATE SUCH.]

A VOLUNTARY conveyance made by a person not indebted at the time, in favor of his wife and children, cannot be impeached by subsequent creditors, upon the mere ground of its being voluntary.

The mere fact, that the grantor was indebted at the time, does not, *per se*, constitute a substantive ground to avoid a voluntary conveyance for fraud, even in regard to prior creditors. The question of fraud is to be ascertained from all the circumstances of the case, and not alone from the mere fact of indebtedment at the time.

If the grantor be not indebted to such a degree, as that the settlement will deprive the creditors of an ample fund for the payment of their debts, the consideration of natural love and affection will support the deed, although a voluntary one, against creditors, because it is free from the imputation of fraud.

But the existence of such means to pay creditors, must be shown by the parties claiming under the deed, and the burden of proof is clearly upon them, to repel the fraud, presumable from the condition of the grantor, at the time the conveyance was made.

A voluntary conveyance in favor of the wife of the grantor, was set aside in this case in favor of creditors, upon proof that he was largely indebted at the period of its execution, and no attempt being made to prove that he had means for the payment of his debts.

A conveyance, purporting to be made for a monied consideration of \$3500, was also set aside, upon clear proof, that the grantor at the time, was irretrievably insolvent, and knew himself to be so, and that it was made with the meditated design to injure and defraud his creditors.

A deed, fraudulent and void as to creditors, is, nevertheless, good *inter partes*. The permanent trustee of an insolvent debtor, has the right to file a bill to set aside conveyances made by his insolvent, as fraudulent at common law, or under the statute of Elizabeth, against creditors. Unless the trustee had this power, the creditors prejudiced by the conveyance, might be without remedy.

[The object of the bill in this case, which was filed on the 5th of March, 1846, was to vacate two conveyances made by William C. Spindler to James Phillips, senr., upon the ground that they were executed to delay, hinder and defraud the credi-