doctrine, as Mr. Justice Story says, was asserted in a case where the conveyance was sought to be set aside by persons claiming under judgment creditors upon antecedent debts. 1 *Story's Eq.*, sec. 362.

If the high authority of the Supreme Court required any support, it would be found in the cases cited by the writer, (in note 21 to this section,) and particularly in the case of *Verplanck* vs. *Story*, 12 *Johns. Rep.*, 536, in which Mr. Justice Spencer, in delivering the opinion of the court, said, "if the person making a settlement is insolvent or in doubtful circumstances, the settlement comes within the statute of 13th Elizabeth, ch. 5. But 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, for, in the language of the decisions, 'it is free from the imputation of fraud.'"

These decisions, thus modifying and mitigating the rule upon this subject, as laid down by Chancellor Kent, in the case referred to, are quite in accordance with the doctrine held by the Court of Appeals of this state, in *Jones* vs. *Sluby*, 5 *H. & J.*, 372, and appear to me to be so perfectly reasonable and judicious, that I should be disposed to adopt and follow them, even if opposed by authorities equally imposing.

That the grantor, Spindler, was largely indebted at the period of the execution of the deed of the 27th March, 1834, is not denied by his answer, and is, moreover, abundantly established by the evidence. If not actually, at that time, insolvent, he was unquestionably in precarious circumstances, and although he alleges that he retained ample means to pay his debts, no attempt has been made to prove the existence of such means, and the burden of proof to repel the fraud presumable from the condition of the grantor at the time, is clearly upon the parties claiming under the deed. *Birely* vs. *Staley*, 5 *G. & J.*, 432.

My opinion, therefore, is, that this deed of the 27th of March, 1834, is void as to creditors under the statute of Elizabeth, being purely voluntary, having been made by a party shown to have