In view of all the circumstances which have been mentioned, there would, perhaps, be quite proof enough to overthrow the conveyance of the equity of redemption, without the evidence of Mr. Spurrier, but I am of opinion, that the declarations made by Mrs. Osborne to him at the time she executed that conveyance, are admissible. If the case of *Merrill* vs. *Meacham*, 5 *Day*, 341, is authority, it concludes the point. In that case, the declarations of a grantor, made at the time of the execution of the deed, the grantee not being present, were admitted in evidence, as part of the *res gesta*, and as constituting an essential part of the facts necessary to understand the transaction. The force of that case is attempted to be broken, by remarks upon the flagrant character of the fraud which the grantor was about to perpetrate upon his creditors, but in answer to this, it may be said that the grantee was no party to this fraud, not even having any knowledge at the time of the execution of the deed, and that when it did come to his knowledge, he paid a valuable consideration for so much of the property as he agreed to accept. It seems to me, however, that the admissibility of this description of evidence cannot depend upon the degree of fraud. Whether it be more or less enormous, or whether there is, or is not, fraud in the transaction, is to be ascertained when the proof is introduced, and to say, that the proof shall not be offered, until the fraud is established, is to say, it shall not be offered until the necessity for its introduction is removed. In truth, in this case of *Merrill* vs. *Meacham*, the gross character of the fraud was made out by the declarations of the grantor. In the case now under consideration, there is a reason for letting in the declarations of the grantor, which did not exist, in the case in *Day*. In this case, the grantee first called on the scrivener, who prepared the deed, and told him, the grantor would call on him, and give him instructions about it. She did call accordingly, gave the instructions, and the deed was prepared, and executed, and her declarations then made, are now offered to show that the object was to defeat her creditors. It seems to me, that by referring the draftsman of the deed to the grantor for instructions, the grantee must be considered, to some extent at least, as constituting the grantor, his agent, and then, of