

EVIDENCE—Continued.

23. Examined copies of the assessor's books of the several counties may be received in evidence. It would be attended with infinite inconvenience, and would defeat one of the great purposes for which these books are made, if their contents could not be proved, except by the production of the books themselves. *Ib.*
24. The declarations of a grantor that the object of a deed was to defeat her creditors, made at the time of the execution of the deed, though not in the presence of the grantee, are admissible in evidence, as part of the *res gestæ*, against the grantee, upon a proceeding to vacate the deed for fraud. *McDowell vs. Goldsmith*, 370.
25. Where 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, and the grantor did call accordingly and give the instructions, according to which the deed was prepared and executed, and the declarations of the grantor then made, being offered to show that the object of the deed was to defeat the creditors of the grantor, it was
HELD—
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 course, the declarations of the agent made in the course of, and accompanying the transaction, would be admissible. *Ib.*
26. The decisions in this state are conclusive to show, that parol proof is inadmissible, to vary the consideration stated in deeds, and thereby either to alter their character, or maintain them, when impeached for fraud, by showing considerations differing from those mentioned in them, though evidence of the same kind of consideration, varying only in amount from that expressed, may be offered. *Sevall vs. Barter and wife*, 447.
27. An indebtedment at the time of making an involuntary conveyance, is, in this state *prima facie* only, and not conclusive evidence of a fraudulent purpose, even with respect to a prior creditor, and this presumption may be repelled, by showing that the grantor, at the time of the gift, was in prosperous circumstances, possessed of ample means to pay his debts, and that the settlement upon the child, was a reasonable provision, according to his or her station and condition in life. *Ib.*
28. Yet, when such indebtedness is shown, the burthen is thrown upon the grantee, of establishing the circumstances which shall repel the fraudulent intent, and the deed stands condemned as fraudulent upon the rights of creditors, unless the facts which may give it validity, are brought before the court by the grantees. *Ib.*
29. Resulting trusts, implied by law, from the manifest intention of the parties, and the nature and justice of the case, are expressly excepted from the operation of the statute of frauds, and the fact of payment may be established by parol proof. *Ib.*
30. But though it is competent for the party to prove the fact of payment