

Elizabeth, valid in point of law, from that circumstance alone. It must also be *bona fide*; for if it be with intent to defraud or defeat creditors it will be void, though there may be a valuable consideration. This doctrine was laid down in *Twyne's case*, 3 *Co. Rep.*, 81, and as Mr. Justice Story says, has been since steadily adhered to. 1st *Story's Eq. Jurisprudence*, section 369. But though a deed made upon a valuable consideration may be successfully impeached, if shown to be made to defraud, or defeat creditors, it is of course indispensably necessary that the fraudulent intent should be shown. It is not a thing to be presumed, but must be proved, and by evidence sufficient for the purpose.

Now, in this case I am not satisfied of the existence of the fraudulent intent. The statement of Grover upon his application for the benefit of the insolvent laws, being excepted to, is clearly inadmissible as evidence against his co-defendant, McCalm, and even if admissible, could not, for the purpose for which it was offered, avail the plaintiff, against the direct and positive evidence of Mr. Mayer, who proves conclusively, that the said defendant could not have had any connection with, or knowledge thereof.

Circumstances here are relied upon, and those circumstances, when ingeniously and skillfully combined, may be made to wear the appearance of suspicion, but I do not find in them, that degree of conclusiveness, which, in my opinion, should induce a court of equity, to take from a purchaser property for which he paid a valuable consideration. The agreement for a reconveyance, upon receiving from the grantor the amount advanced for, and due by him to, the defendant, McCalm, is denied, and not proved, and, therefore, it is not necessary to consider what would be the effect of such an agreement if proved, or admitted. I cannot, upon this record, bring myself to think, that McCalm, in taking these conveyances, was influenced by a desire to defraud or defeat the creditors of Grover. He had a perfect right, upon common law principles, and apart from our insolvent laws, to secure himself, and with respect to the real estate, there appears in the case, reasons of special weight, entitling