

Twyne's Case.

3 Co. Rep. 80 b-85 B-(S. C. 1 Smith's Lead. Cas. 8th ed. 1).

Assignment of Chattels. — Fraud under Statute of 13 Eliz.

[80 b] A. indebted to B. in four hundred pounds, and to C. in two hundred pounds, being sued in debt by C., pending the writ, makes a secret assignment of all his goods and chattels to B. generally, without exception, in satisfaction of his debt, but still continues in possession, and sells some sheep, and sets his mark on others; held that this was a fraudulent gift within the 13 Eliz. c. 5. 1st. Because the gift was general, without exception of his apparel, &c.; the donor continued in possession, and used them as his own; it was made in secret, pending the writ; there was a trust between the parties; and the deed contained an unusual clause, — that it was made *bonâ fide*, &c. 2nd. That a good consideration is not sufficient to take a case out of the statute, unless the deed be made *bonâ fide* also.

What conveyances are fraudulent within the 13 Eliz. c. 5, and 27 Eliz. c. 4.

Statutes made in suppression of fraud are to be construed liberally for that purpose.

A conveyance made with a power of revocation is fraudulent as against a purchaser, though the power be future, or to be exercised with the assent of another person. So if the power be afterwards extinguished by fine, to defraud a purchaser, the fine is void as to him.

A bond void in part by the statute law, is void *in toto*.

None but *bonâ fide* purchasers for a valuable and not inadequate consideration, can take advantage of the stat. 27 Eliz. c. 4.

In an information by Coke, the Queen's Attorney General, against Twyne of Hampshire, in the Star Chamber, for making and publishing of a fraudulent gift of goods: the case on the stat. of 13 Eliz. cap. 5 was such; Pierce was indebted to Twyne in four hundred pounds, and was indebted also to C. in two hundred pounds. C. brought an action of debt against Pierce, and pending the writ, Pierce being possessed of goods and chattels of the value of three hundred pounds, in secret made a general deed of gift of all his goods and chattels real and personal whatsoever to Twyne, in satisfaction of his debt; notwithstanding that Pierce continued in possession of the said goods, and some of them he sold; and he shorn the sheep, and marked them with his own mark: and afterwards C. had judgment against Pierce, and had a *feri facias* directed to the Sheriff of Southampton, who by force of the said writ came to make execution of the said goods; but divers persons, by the command of the said Twyne, did with force resist the said

Sheriff, claiming them to be the goods of the said Twyne by force of the said gift; and openly declared by the commandment of Twyne, that it was a good gift, and made on a good and lawful consideration. And whether this gift on the whole matter was fraudulent and of no effect by the said act of 13 Eliz. or not, was the question. And it was resolved by Sir THOMAS EGERTON, Lord Keeper of the Great Seal, and by the Chief Justice POPHAM and ANDERSON, and the whole court of Star Chamber, that this gift was fraudulent, within the statute of 13 Eliz. And in this case divers points were resolved:

1st. That this gift had the signs and marks of fraud, * because the gift is general, without exception of his apparel, or any thing of necessity; for it is commonly said, *quod dolus versatur in generalibus*.

2nd. The donor continued in possession, and used them as his own; and by reason thereof he traded and trafficked with others, and defrauded and deceived them.

3rd. It was made in secret, *et dona clandestina sunt semper suspiciosa*.

4th. It was made pending the writ.

5th. Here was a trust between the parties, for the donor possessed all, and used them as his proper goods, and fraud is always apparelled and clad with a trust, and a trust is the cover of fraud.

6th. The deed contains, that the gift was made honestly, truly, and *bonâ fide*; *et clausulæ inconsuetæ semper inducunt suspicionem*.

Secondly, it was resolved, that notwithstanding here was a true debt due to Twyne, and a good consideration of the gift, yet it was not within the proviso of the said Act of 13 Eliz., by which it is provided, that the said Act shall not extend to any estate or interest in lands, &c., goods or chattels made on a good consideration and *bonâ fide*; for although it is on a true and good consideration, yet it is not *bonâ fide*, for no gift shall be deemed to be *bonâ fide* within the said proviso which is accompanied with any trust; as if a man be indebted to five several persons, in the several sums of twenty pounds, and hath goods of the value of twenty pounds, and makes a gift of all his goods to one of them in satisfaction of his debt, but there is a trust between them, that the donee shall deal favourably with him in regard of his poor estate, either to permit the donor, or some other for him, or for his benefit, to use or have possession of them, and is contented that he shall pay him

his debt when he is able ; this shall not be called *bonâ fide* within the said proviso ; for the proviso saith on a good consideration, and *bonâ fide* ; so a good consideration doth not suffice, if it be not also *bonâ fide* : and therefore, reader, when any gift shall be to you in satisfaction of a debt, by one who is indebted to others also ; 1st, Let it be made in a public manner, and before the neighbours, and not in private, for secrecy is a mark of fraud. 2nd, Let the goods and chattels be appraised by good people to the very value, and take a gift in particular in satisfaction of your debt. 3rd, Immediately after the gift, take the possession of them ; for continuance of the possession in the donor is a sign of trust. And know, reader, that the said words of the proviso, on a good consideration, and *bonâ fide*, do not extend to every gift made *bonâ fide* ; and therefore there are two manners of gifts on a good consideration, *scil.* consideration of nature or blood, and a valuable consideration. As to the first, in the case before put ; if he who is indebted to five several persons, to each party in twenty pounds, in [* 81 b] consideration of natural affection, gives *all his goods to his son, or cousin, in that case, forasmuch as others should lose their debts, &c., which are things of value, the intent of the act was, that the consideration in such case should be valuable ; for equity requires, that such gift, which defeats others, should be made on as high and good consideration as the things which are thereby defeated are ; and it is to be presumed, that the father, if he had not been indebted to others, would not have dispossessed himself of all his goods, and subjected himself to his cradle ; and therefore it shall be intended, that it was made to defeat his creditors : and if consideration of nature or blood should be a good consideration within this proviso, the statute would serve for little or nothing, and no creditor would be sure of his debt. And as to gifts made *bonâ fide*, it is to be known, that every gift made *bonâ fide* either is on a trust between the parties, or without any trust ; every gift made on a trust is out of this proviso ; for that which is betwixt the donor and donee, called a trust *per nomen speciosum*, is in truth, as to all the creditors, a fraud, for they are thereby defeated and defrauded of their true and due debts. And every trust is either expressed, or implied : an express trust is when in the gift, or upon the gift, the trust by word or writing is expressed : a trust implied is, when a man makes a gift without any consideration, or on a consideration of

nature, or blood only : and therefore, if a man before the stat. of 27 H. VIII. had bargained his land for a valuable consideration to one and his heirs, by which he was seised to the use of the bargainee ; and afterwards the bargainor, without a consideration, enfeoffed others, who had no notice of the said bargain ; in this case the law implies a trust and confidence, and they shall be seised to the use of the bargainee : so in the same case, if the feoffees, in consideration of nature, or blood, had without a valuable consideration enfeoffed their sons, or any of their blood who had no notice of the first bargain, yet that shall not toll the use raised on a valuable consideration ; for a feoffment made only on consideration of nature or blood, shall not toll an use raised on a valuable consideration, but shall toll an use raised on consideration of nature, for both considerations are *in æquali jure*, and of one and the same nature.

And when a man, being greatly indebted to sundry persons, makes a gift to his son, or any of his blood, without consideration, but only of nature, the law intends a trust betwixt them, *scil.* that the donee would, in consideration of such gift being voluntarily and freely made to him, and also in consideration of nature, relieve his father, or cousin, and not see him want who had made such gift to him (*vide* 33 H. VI., 33, by Prisot), if the father enfeoffs his son and heir apparent within age *bonâ fide*, yet the lord shall have the wardship of him : so note, valuable consideration is a good consideration within this proviso ; and a gift made *bonâ fide* is a gift made without any trust either expressed or implied : * by [* 82 a] which it appears, that as a gift made on a good consideration, if it be not also *bonâ fide*, is not within the proviso, so a gift made *bonâ fide*, if it be not on a good consideration, is not within the proviso ; but it ought to be on a good consideration, and also *bonâ fide*.

To one who marvelled what should be the reason that acts and statutes are continually made at every Parliament without intermission, and without end, a wise man made a good and short answer, both which are well composed in verse.

“ *Quæritur, ut crescant tot magna volumina legis ?*
In promptu causa est, crescit in orbe dolus.

And because fraud and deceit abound in these days more than in former times, it was resolved in this case by the whole Court, that

all statutes made against fraud should be liberally and beneficially expounded to suppress the fraud. Note, reader, according to their opinions, divers resolutions have been made.

Between *Pauncefoot v. Blunt*, in the Exchequer Chamber, Mich. 35 & 36 Eliz. the case was : Pauncefoot being indicted for recusancy, for not coming to divine service, and having an intent to flee beyond sea, and to defeat the Queen of all that might accrue to her for his recusancy or flight, made a gift of all his leases and goods of great value, coloured with feigned consideration, and afterwards he fled beyond sea, and afterwards was outlawed on the same indictment ; and whether this gift should be void to defeat the Queen of her forfeiture, either by the common law, or by any statute, was the question : and some conceived that the common law, which abhors all fraud, would make void this gift as to the Queen ; *vide* Mich. 12 & 13 Eliz. Dyer, 295, 4 & 5 P. & M. 160. And the stat. of 50 E. III., cap. 6, was considered ; but that extends only in relief of creditors, and extends only to such debtors as flee to sanctuaries, or other privileged places : but some conceived, that the stat. of 3 H. VII., cap. 4, extends to this case. For although the preamble speaks only of creditors ; yet it is provided by the body of the act generally, that all gifts of goods and chattels made or to be made on trust to the use of the donor, shall be void and of no effect, but that is to be intended as to all strangers who are to have prejudice by such gift, but between the parties themselves it stands good : but it was resolved by all the Barons, that the stat. 13 Eliz. cap. 5, extends to it, for thereby it is enacted and declared, that all feoffments, gifts, grants, &c., “ to delay, hinder, or defraud creditors, and others, of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs,” shall be void, &c. So that this Act doth not extend only to creditors, but to all others who had cause of action, or suit, or any penalty, or forfeiture, &c.

[* 82 b] * And it was resolved, that this word “ forfeiture ” should not be intended only of a forfeiture of an obligation, recognizance, or such like (as it was objected by some, that it should, in respect that it comes after damage and penalty) but also to every thing which shall by law be forfeited to the King or subject. And therefore if a man, to prevent a forfeiture for felony, or by outlawry makes a gift of all his goods, and afterwards is attainted or outlawed, these goods are forfeited notwithstanding

this gift: the same law of recusants, and so the statute is expounded beneficially to suppress fraud. Note well this word "declare" in the act of 13 Eliz. by which the Parliament expounded that this was the common law before. And according to this resolution it was decreed, Hil. 36 Eliz. in the Exchequer Chamber.

Mich. 42 & 43 Eliz. in the Common Pleas, on evidence to a jury, between *Standen* and *Bullock*, these points were resolved by the whole Court on the stat. of 27 Eliz. cap. 4. WALMSLEY, J., said, that Sir CHRISTOPHER WRAY, late C. J. of England, reported to him, that he, and all his companions of the King's Bench were resolved, and so directed a jury on evidence before them; that where a man had conveyed his land to the use of himself for life, and afterwards to the use of divers others of his blood, with a future power of revocation, as after such feast, or after the death of such one; and afterwards, and before the power of revocation began, he, for valuable consideration, bargained and sold the land to another and his heirs: this bargain and sale is within the remedy of the said statute. For although the statute saith, "the said first conveyance not by him revoked, according to the power by him reserved," which seems by the literal sense to be intended of a present power of revocation, for no revocation can be made by force of a future power until it comes *in esse*; yet it was held that the intent of the Act was, that such voluntary conveyance which was originally subject to a power of revocation, be it in *praesenti* or *in futuro*, should not stand against a purchaser *bona fide* for a valuable consideration; and if other construction should be made, the said Act would serve for little or no purpose, and it would be no difficult matter to evade it: so if A. had reserved to himself a power of revocation with the assent of B., and afterwards A. bargained and sold the land to another, this bargain and sale is good, and within the remedy of the said Act; for otherwise the good provision of the Act, by a small addition, and evil invention, would be defeated.

And on the same reason it was adjudged, 38 Eliz. in the Common Pleas, between *Lee* and his wife, executrix of one Smith, plaintiff, and *Mary Colshil*, executrix of Thomas Colshil, defendant, in debt on an obligation of one thousand marks, Rot. 1707; the case was, Colshil the testator had the office of the Queen's customer, by letters patent, to him and his deputies; and by indenture between him and Smith, the testator of the plaintiff, and for six hundred

[* 88 a] pounds paid, and one hundred pounds per annum * to be paid during the life of Colshil, made a deputation of the said office to Smith; and Colshil covenanted with Smith, that if Colshil should die before him, that then his executors should repay him three hundred pounds. And divers covenants were in the said indenture concerning the said office, and the enjoying of it: and Colshil was bound to the said Smith in the said obligation to perform the covenants; and the breach was alleged in the non-payment of the said three hundred pounds, forasmuch as Smith survived Colshil: and although the said covenant to repay the three hundred pounds was lawful, yet forasmuch as the rest of the covenants were against the statute of 5 E. VI., cap. 16, and if the addition of a lawful covenant should make the obligation of force as to that, the statute would serve for little or no purpose; for this cause it was adjudged, that the obligation was utterly void.

2nd, It was resolved, that if a man hath power of revocation, and afterwards, to the intent to defraud a purchaser, he levies a fine, or makes a feoffment, or other conveyance to a stranger, by which he extinguishes his power, and afterwards bargains and sells the land to another for a valuable consideration, the bargainee shall enjoy the land, for as to him, the fine, feoffment, or other conveyances, by which the condition was extinct, was void by the said Act; and so the first clause, by which all fraudulent and covinous conveyances are made void as to purchasers, extends to the last clause of the Act, *scil.* when he who makes the bargain and sale had power of revocation. And it was said that the statute of 27 Eliz. hath made voluntary estates made with power of revocation, as to purchasers, in equal degree with conveyances made by fraud and covin to defraud purchasers.

Between *Upton v. Bassett* in trespass, Trin. 37 Eliz. in the Common Pleas, it was adjudged, that if a man makes a lease for years, by fraud and covin, and afterwards makes another lease *bond fide*, but without fine or rent reserved, that the second lessee should not avoid the first lease.

For first it was agreed, that by the common law an estate made by fraud should be avoided only by him who had a former right, title, interest, debt, or demand, as 33 H. VI. a sale in open market by covin shall not bar a right which is more ancient: nor a covinous gift shall not defeat execution in respect of a former debt, as it is agreed in 22 Ass. 72, but he who hath right, title, interest, debt.

or demand, more puisne, shall not avoid a gift or estate precedent by fraud by the common law.

2nd, It was resolved, that no purchaser should avoid a precedent conveyance made by fraud and covin, but he who is a purchaser for money or other valuable consideration, for although in the preamble it is said "for money or other good consideration," and likewise in the body of the Act "for money or other good consideration," yet these words "good consideration" are to be intended only of valuable consideration; and that appears by the clause which concerns those who had power of revocation; for there it is said, for money or other good consideration paid, or given, and this word "paid" is to be referred to "money," and "given" is to be referred to "good consideration," so the sense is for money paid, or other good consideration given, which words exclude all considerations of * nature or blood, or [* 83 b] the like, and are to be intended only of valuable considerations which may be given; and therefore he who makes a purchase of land for a valuable consideration, is only a purchaser within this statute. And this latter clause doth well expound these words "other good consideration" mentioned before in the preamble and body of the Act.

And so it was resolved, Pasch. 32 Eliz. in a case referred out of the Chancery to the consideration of WINDHAM and PERIAM, Justices: *John Nedham*, plaintiff, v. *Beaumont, Serjeant-at-law*, defendant: where the case was, Henry Babington seised in fee of the manor of Lit-Church in the County of Derby, by indenture 10 February, 8 Eliz. covenanted with the Lord Darcy, for the advancement of such heirs male, as well those he had begot, as those he should afterwards beget on the body of Mary, then his wife (sister to the said Lord Darcy) before the feast of St. John Baptist then next following, to levy a fine of the said manor to the use of the said Henry for his life, and afterwards to the use of the eldest issue male of the bodies of the said Henry and Mary begotten in tail, &c., and so to three issues of their bodies, &c., with the remainder to his right heirs. And afterwards, 8 Maii, ann. 8 Eliz., Henry Babington, by fraud and covin, to defeat the said covenant, made a lease of the said manor for a great number of years, to Robert Heys; and afterwards levied the fine accordingly: and on conference had with the other justices, it was resolved, that although the issue was a purchaser, yet he was not a purchaser in vulgar

and common intendment: also consideration of blood, natural affection, is a good consideration, but not such a good consideration which is intended by the Stat. of 27 Eliz., for a valuable consideration is only a good consideration within that Act. In this case ANDERSON, C. J., of the Common Pleas, said, that a man who was of small understanding, and not able to govern the lands which descended to him, and being given to riot and disorder, by mediation of his friends openly conveyed his lands to them, on trust and confidence that he should take the profits for his maintenance, and that he should not have power to waste and consume the same; and afterwards, he being seduced by deceitful and covinous persons, for a small sum of money bargained and sold his land, being of a great value: this bargain, although it was for money, was holden to be out of this statute; for this Act is made against all fraud and deceit, and doth not help any purchaser, who doth not come to the land for a good consideration lawfully and without fraud or deceit; and such conveyance made on trust is void as to him who purchases the land for a valuable consideration *bonâ fide*, without deceit or cunning.

And by the judgment of the whole Court Twyne was convicted of fraud, and he and all the others of a riot.