Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Corlett v. *Radcliffe and others, from the Court of Chancery, Isle of Man; delivered December* 20, 1860.

Present:

LORD CHELMSFORD.
LORD JUSTICE KNIGHT BRUCE.
SIR EDWARD RYAN.
LORD JUSTICE TURNER.

THIS is an appeal from a Decree of the Court of Chancery in the Isle of Man upon a bill filed by the creditors of Robert Corlett, deceased, the father of the Appellant, for the purpose of setting aside two deeds of the 4th July, 1846, and the 31st of October, 1849, as fraudulent and void.

The deeds in question relate to certain lands called the Craig Estate, which formerly belonged to Robert Corlett.

By a law of the island passed in 1737, it is declared that "all fraudulent assignments or transfers of a debtor's goods and effects shall be void and of no effect against his just creditors, any custom or practice to the contrary notwithstanding." This law applies in terms only to goods and effects; but it was stated in argument, and not denied, that lands liable to be taken in execution are within its provisions. This, however, still left the question open whether the lands of the Craig Estate were of such a nature as to be liable to be taken in execution; as to which it was alleged by the Respondents that the estate consists partly of land denominated quarterland, and partly of land called intack land; that intack land is always liable to be attached and

sold for debt, and quarterland also, when acquired by purchase, or otherwise than by inheritance.

There was no very satisfactory information afforded to their Lordships as to the law upon this subject, nor any sufficient evidence of the quality of the lands composing the Craig Estate. But it must be observed, that the Appellant, in the reasons for his appeal stated in his printed Case, alleges no objection to the Decree on the ground that the creditors were not prejudiced by the deed, as the lands were not liable to their execution. And it appears that, by a law of the island, where a debtor having lands is in prison, he cannot be discharged until he has made a mortgage of the lands for the benefit of his creditors. In this manner, therefore, the creditors may have a remedy against the lands for the satisfaction of their debts, and any conveyance by the debtor which deprives them of this ultimate recourse to his lands may be fraudulent against them, as much as if the lands were immediately liable to execution.

In the course of the argument many cases were cited which had been determined in the English Courts under the 13 Eliz., c. 5, the Act for the protection of creditors against fraudulent deeds of their debtors, but decisions upon this subject are of no practical utility, except where they establish principles which are of general application. Each case must depend upon its own circumstances, and in all the question is one of fact whether the transaction was *bonâ fide*, or was a contrivance to defraud creditors. It may, however, be stated generally that a deed is void against creditors when the debtor is in a state of insolvency, or when the effect of the deed is to leave the debtor without the means of paying his present debts. If this is the condition of the debtor, or the consequence of his act, it is not sufficient to render a deed valid that it should be made upon good consideration; for as is said in Twyne's case (3 Rep. 80), "a good consideration doth not suffice if it be not also *bonâ fide*." The questions therefore in this case are, what were the circumstances of Robert Corlett at the date of the deed, and was the deed executed *bonâ fide* and for valuable consideration? Robert Corlett had become poseessed of the Craig estate under a deed of the 14th February, 1845, and had, some

short time afterwards (the exact date does not appear), mortgaged it to Mr. Dumbell, a member of the legal profession, and also a banker in the Island, for the sum of 3,500*l.* This money was raised for the purpose of paying off incumbrances on the Craig Estate and other lands. In the year 1846 Robert Corlett required a further loan of 500*l.* in order to pay his debts; and Mr. Dumbell states that, upon an application to him, he refused to make the loan unless Robert Corlett "would grant a settlement of his estate, in order to secure it to his family and prevent his squandering it." This object may have been extremely praiseworthy, and there is no occasion to question the motive of Mr. Dumbell in suggesting it; but the circumstances of Robert Corlett rendered it proper to consider the interests of other parties, and the mode in which the transaction was carried out left it open to great suspicion. The 500*l.* which Mr. Dumbell advanced was not sufficient to pay all the debts due from Robert Corlett at this time, for it appears by the report of the Clerk of the Rolls, to whom the matter was referred by the Court, that previous to the 4th July, 1846, there was due and owing from him, in addition to debts covered by the 500*l.*, the sum of 277*l.* 1*s.* 6*d.* Many of these debts were of a character to indicate a state of great embarrassment. If reference is made to the Coroner's account of the 8th September, 1849, in which there is a balance of 175*l.* 2*s.* 1¼*d.* upon several executions against Robert Corlett, it will appear that for years before the date of the deed executions had been issued against him, and that by some unusual forbearance on the part of the creditors, or from their belief of his inability to discharge these executions, they were allowed to continue unsatisfied, and interest was annually charged upon them; the first item of the account, after stating the balance due, being "To amount of executions up to May 1848, as per account, 394*l.* 18*s.* 5*d.*" Some of the executions are for very small sums, one of them being for only 2*l.*, and nothing can show more strongly the embarrassment, not to say insolvency, to which Robert Corlett must have been reduced, than his allowing these trifling debts to be increasing year after year by the addition of interest, instead of dis-

charging them at once, and thus saving further expense. When Mr. Dumbell engaged in the transaction, which he insisted should accompany his advance of the 500*l.*, he must have been acquainted with the state of Robert Corlett's affairs; for it is not to be supposed that as a prudent man he would not require the fullest information respecting them, and it appears from his own evidence that he himself applied the money advanced in payment of the debts owing by Robert Corlett, "the principal part of the money (as he states) being paid to the Coroner," which must have been on the running account of executions. Mr. Dumbell, as a professional man, must have known that in order to prevent the conveyance which was to secure the estate to Robert Corlett's family, being impeached by his creditors, it was absolutely necessary that it should appear to have been founded upon good consideration. He appears to have taken upon himself the whole arrangement of the machinery for carrying out his object. He begins by preparing a joint bond of Robert Corlett the father and the Appellant, to secure the repayment of the 500*l.* It does not appear from Mr. Dumbell's evidence that this bond formed any part of the stipulation upon which the money was to be advanced, nor that the Appellant was any party to the arrangement as originally proposed. Neither is there any evidence to show what was the value of the personal security of the Appellant, nor the means which he possessed of satisfying his liability upon the bond.

It is difficult to believe that Mr. Dumbell regarded this bond of the Appellant as affording him any additional security, nor, indeed, from the terms of the instrument itself, that he placed any reliance upon the personal obligation of the parties to it.

There can be no doubt that the Craig Estate was an ample security for the original mortgage of 3,500*l.*, and for the additional loan of 500*l.*; and the terms of the condition of the bond seem to imply, if not to express, that it was the intention of the parties that the personal liability should not be enforced, unless the Craig Estate should prove deficient. It stipulates that Dumbell should not be compelled to receive the 500*l.* till the expiration of six years, and then only after a twelvemonth's notice. That he should have a right, upon giving twelve-

month's notice, to require payment of the principal and interest; and in case, after such notice, he should not be able to obtain payment under the deed, he should have a right to sue out execution or judgment against the obligors, and under and by virtue thereof to make sale by public auction of the lands thereby given in security for the purpose of paying off and discharging the principal, interests, costs, and charges due upon the deed.

The personal liability of the parties is here entirely lost sight of, and the whole object of the condition seems to be to make the estate available for satisfaction of the money advanced.

Mr. Dumbell's professional experience seems to have instructed him that, if he wished to secure the estate to Robert Corlett's family against the claims of his creditors, it would be necessary to provide some other consideration than the release of the portion of the 500*l.* legacy to which the Appellant is stated to be entitled under the will of Miss Catherine Stephen, but of which there is no evidence, and the charge of 700*l.* created upon the transferred estate for the benefit of the grantor, his wife, and their younger children, which was a mere voluntary provision. He, therefore, acting upon his own idea of what was necessary, and, apparently, without thinking it requisite to have the previous consent of the parties, framed an instrument by which a consideration is made to move from the Appellant, but which, upon close examination, appears to be merely colourable.

In inquiring into the validity of a transaction of this description, it is always important to consider whether there was publicity given to it, or whether it was kept secret from the world.

Now, if the other parts of the case were free from suspicion, the mere fact of a relation having been named as trustee in the deed without his previous consent, and without any subsequent communication of his appointment, might not be of much importance; but it is a circumstance which cannot be overlooked in this case that the trustee was utterly ignorant of the existence of the deed for several years after it was executed, although, upon the marriage of the Appellant, which took place in October 1848, he would have had a duty to perform in assuring and conveying to him a moiety of the estate.

This secresy towards the trustee is followed by a circumstance of the same character, viz., the omission to register the deed. Whether the registration of such a deed was necessary or not at this time is wholly immaterial, because Mr. Dumbell says that both deeds were left with him to record. Now there is not the slightest explanation attempted of the fact of the registration of one of the deeds and the omission to register the other. Mr. Dumbell says, merely, "I know of no reason for keeping the deed of sale in trust secret. If it was not recorded soon after its execution it was my fault." But as the two deeds were in his possession for the same purpose, it is difficult to understand how it happened that, when he was recording one, he should wholly have overlooked the other.

The conduct of the parties in respect of the rights acquired under the deed is also important upon the question whether the transaction was *bonâ fide*. Now the Appellant, upon his marriage, on the 17th of October, 1848, became entitled to have a moiety of the estate conveyed to him. But no change of the ownership of any part of the estate took place upon this event; Robert Corlett continued to farm the lands, and appeared to the world as the sole owner down, at least, to December 1849.

It is unnecessary, perhaps, to follow the case further, but it is matter of remark, and has some bearing on the part Mr. Dumbell took in the original transaction, by which a moiety of the estate was to be secured to the family of Robert Corlett, that we find him afterwards, on October 30, 1849, preparing and witnessing the execution of an extraordinary lease of the other moiety, by which the Appellant acquired the right to the possession of the whole estate. It must be observed that this lease contains a recital that the Craig lands were held by Robert Corlett and the Appellant between them, whereas the fact appears to be (as already stated) that Robert Corlett alone farmed the estate down to a later period.

The existence of this lease was wholly unknown to the creditors of Robert Corlett, and on the following day—as if the Appellant had never had possession of any part of the estate before—by a deed of October 31, 1849, Robert Corlett granted to the Appellant the whole of the Craig estate, in

trust, to pay the interest upon the mortgages chargeable upon the premises, and after payment thereof in trust, to pay over the balance of the annual rents equally amongst his creditors. This deed was registered immediately, and although it is not very easy to understand its object with reference to the previous dealings with the property, yet it may possibly have been intended to quiet the creditors of Robert Corlett by this seeming regard to their interests, while the interest of the mortgages would absorb so much of the rents that it would be of little avail to them to require the trustee to account to them for the surplus, or to disturb the possession of the property by the Appellant.

Upon the whole of the circumstances of the case, their Lordships are of opinion that the deed of July 4, 1846, was not made *bonâ fide* and for valuable consideration, and that it is fraudulent and void against the creditors of Robert Corlett; they consider, also, that the deed of October 31, 1849, ought to be set aside. The Decree is therefore substantially correct as to the deed of July 4, 1846, but their Lordships will recommend to Her Majesty to vary it, by ordering that deed to be set aside as to the creditors generally, and not merely as to the creditors whose debts were due previous to October 23, 1848; and to vary the other part of the Decree as to the deed of October 31, 1849, by ordering that deed also to be set aside.

Their Lordships will also direct that the Appellants pay the costs of this appeal.