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proposition as wide of the fact, with reference to the topography of the country, as it is of the intendment of law, or the finding of the jury. For the words of the special verdict are, "that the vessel, when seized, lay at anchor in the harbor, or port of Barnstable, above half a mile from the shore or beach, and about three miles from the harbor of Yarmouth." That the jury did not intend to confound Gage's wharf with the harbor of Yarmouth is distinctly shown, by the words that follow the above, declaring Gage's wharf to be six miles and a half from where the vessel was seized. Whether the jury were right, or wrong in fixing these distances, the inference we deduce from it is still the same, to wit, that the harbor of Yarmouth and Gage's wharf could not be one, no more than the port of Barnstable and the harbor of Yarmouth. The vessel lay in the former, three miles distant from the latter, and six and a half from Gage's wharf.

Upon the whole, we can discover nothing in this case, to induce us to alter the opinion entertained in the two former, that the vessel had not reached the *terminus* of her voyage, that she was *in itinere*, and therefore, liable to seizure. On the subject of the argument deduced from the demand of the permit to land, we think this also was fully answered and disposed of in the former decisions of this court, in the same suit. We are, therefore, of opinion, that the act on which the collector relies, justified the seizure; that there is error in the judgment of the court of Massachusetts; that *it must be reversed, and a judgment entered for the plaintiff here, [*199 the defendant in the original suit.

Judgment accordingly.

HINDE'S LESSEE v. LONGWORTH.

Exception.—Fraudulent conveyance.

Question as to the sufficiency of a certificate of acknowledgment of a deed of lands in Ohio.

In examining the admissibility of testimony in the court above, the party excepting is to be confined to the specific objection taken at the trial.¹

Where a voluntary deed is impeached as fraudulent, evidence of judgments against the grantor is admissible, as proof (among other facts) that he was indebted at the time of making the deed, although the grantee was not a party to the suits on which the judgments were obtained.

A voluntary deed is void as to antecedent, but not as to subsequent, creditors.²

ERROR to the Circuit Court of Ohio. This was an action of ejectment, brought by the plaintiff in error, to recover the possession of the premises in the cause, described as in lot No. 107, in the town of Cincinnati.

It appeared in evidence, at the trial, that on the 28th of March 1799, Thomas Doyle, sen., under whom both parties derived title, was seised and possessed of the lot in question. The lessor of the plaintiff claimed under a deed of that date from Thomas *Doyle, sen., to his son Thomas; [*200 and the defendant set up a title under a judgment against Doyle, the elder, at the suit of John Graff, entered at the August term 1799, of the court of common pleas for the county of Hamilton. At the trial, three bills of exception were taken by the lessor of the plaintiff.

¹ Stoddard v. Chambers, 2 How. 284; Burton v. Driggs, 20 Wall. 125.

² Burbank v. Hammond, 3 Sumn. 429; Gilmore v. N. A. Land Co. Pet. C. C. 460; Hop-

kirk v. Randolph, 2 Brock. 132; Mattingly v. Nye, 8 Wall. 370; Barker v. Barker, 2 Woods 87; Graham v. Railroad Co., 102 U. S. 153

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The first bill of exceptions stated, that the plaintiff, in support of his action, offered in evidence the deed from Doyle, sen., to his son, to the reading of which in evidence, the defendant objected, and the court rejected it, as not being properly acknowledged. The certificate of acknowledgment was as follows :

" Hamilton, ss : Personally, before me, Thomas Gibson, one of the justices of the court of common pleas for said county, the above-named Thomas Doyle and — Doyle, his wife, who being examined separate and apart, acknowledged the foregoing deed to be her hand and seal, free act and deed, for the uses and purposes mentioned."

Thomas Doyle only had signed the deed ; his wife was not named as a party to the conveyance, except in the conclusion of the deed, as follows : "In witness whereof, the said Thomas Doyle and —, his wife, who hereby relinquishes her right of dower in the premises, have hereto set their hands and affixed their seals, the day and year first above written." A seal was affixed to the deed, but no signature of the wife.

In the second bill of exceptions, the counsel for the plaintiff stated, that he claimed title under the same deed mentioned in the first exception, *201] *by virtue of which Doyle, the younger, became seised of the premises in question, which had descended to the wife of the lessor of the plaintiff, to which facts he adduced proof to the jury. The bill of exceptions then proceeded to state, that the defendant, in order to prove that the deed was made with intent to defraud creditors, having read certain depositions to establish that fact, offered in evidence the records of two judgments recovered against Doyle, the elder, one at the suit of John Graff, at the August term 1799, of the court of common pleas for the county of Hamilton, for upwards of \$900 ; and the other, in favor of Edward Shoemaker, at the October term 1800, of the same court, for \$590. To which testimony, the plaintiff objected, as incompetent evidence, upon the ground, that the proceedings in said suits had taken place between other persons than himself and Doyle, jun., and to which he was not a party. The objection was overruled by the court, and the testimony admitted.

The third bill of exceptions stated, that after the admission of the evidence aforesaid (the judgment records), and in order to repel the presumption of fraud in Doyle, the elder, and to show that he had no intention to defraud creditors, by making the said deed, but to prove that Doyle, the younger, then an infant, was the creditor of his father, the plaintiff offered in evidence the depositions of certain witnesses. The bill of exceptions then proceeded to state, that the depositions were offered to rebut the evidence *202] *of fraud in fact, and the evidence of a fraudulent intent in the grantor ; but the court declared their opinion to be, that the last-mentioned evidence, offered for rebutting the charge of fraud, was inadmissible, and rejected the whole of the evidence so offered.

Upon these exceptions, a verdict and judgment having been entered for the defendant, in the court below, the cause was brought by writ of error to this court.

February 15th. The cause was argued by *Scott*, for the plaintiff ; and by *Webster* and *Hammond*, for the defendant.

On the part of the *plaintiff*, it was contended : 1. That the court below

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erred in rejecting the evidence stated in the first bill of exceptions, of the acknowledgment of the deed from Doyle, sen. Co. Litt. 9 *b*; 3 Atk. 409; 2 Ibid. 465; Hughes 184; 1 Doug. 384; Ambl. 194; 2 Burr. 193; 6 East 486; 9 Mass. 218; 15 Johns. 109, 111.

2. That there was error in admitting the evidence offered by the defendant, as stated in the second bill of exceptions, to impeach the deed for fraud. It was not fraudulent at common law, prior to the statute 13 Eliz., c. 5; Roberts on Frauds 12-15, and note *c*; Ibid. 37, 116, 574; 1 Co. 93 *b*; Dyer 192 *b*, and 167 *b*; 10 Co. 56; 2 P. Wms. 154, 157, 220; Roberts on Frauds 37, and note *p*; and that statute had never been adopted in Ohio. Ord. of 1787, § 1; 1 Laws U. S. 476; 2 Rev. Code 302.

*3. The evidence stated in the third bill of exceptions was erroneously rejected, even supposing the statute 13 Eliz., c. 5, to be in force in [*203 the states which formed the territory north-west of the river Ohio. The statute 27 Eliz., c. 4, is construed more strongly in favor of purchasers, than that of 13 Eliz., c. 5, in favor of creditors. A mere voluntary conveyance, under the last-mentioned statute, is only presumptive evidence of an intention to defraud creditors, and may be rebutted by countervailing testimony. 1 Lev. 150, 237; 1 Vent. 293; 1 Ch. Cas. 99; 2 Burr. 1072; Roberts on Frauds 30, 191. The authorities make a distinction between a conveyance to a stranger, and a conveyance to a child, for maintenance and advancement; the latter is not considered as voluntary. Fonbl. Eq. 127, note 1; Sugd. on Vend. 420; 1 P. Wms. 112. It is necessary to prove that the grantor was indebted at the time of making the conveyance. 1 Atk. 94; 1 Ves. sen. 10; 2 Bro. C. C. 90. A voluntary settlement by a trader, who afterwards becomes bankrupt, is good against all subsequent creditors, under the statute of Eliz., although it is void under the bankrupt laws. 8 Ves. 199; 1 Swanst. 106; Brownl. 189; 5 Ves. 384; Newl. on Cont. 385; 11 Mass. 421; 9 Ibid. 390; Ambl. 596; 3 Dessaus. 1. Besides, there was, in this case, evidence that the grantee was the creditor of the grantor, his father; so that, though he was then an infant, the conveyance was not *voluntary, but for a valuable consideration. Co. Litt. 2 *b*; 2 Lev. 217. If [*204 it should be objected, that the evidence offered was contrary to the consideration expressed in the deed, the answer is, that the party may aver and prove a consideration different from that expressed in the conveyance, if it be consistent with that expressed. Phil. Ev. 425-6, and authorities there cited. And courts will uphold settlements made upon fair and *bona fide* inducements, by every reasonable presumption in their favor. Roberts on Frauds 80, 149; 2 P. Wms. 245; Cas. temp. Talb. 64; 1 Atk. 188.

On the part of the *defendant*, it was insisted, that the statutes of frauds had been practically adopted in Ohio, by the governor and judges, under the provision of the ordinance of congress of 1787. Ohio Land Laws 322. To adopt them, by reference, without reciting them at large, has been the usual mode of adopting and publishing the English statutes which formed parts of the "laws of the United States." The common law itself is in force only by virtue of the same adoption. The statutes of frauds having been heretofore generally acted upon, and considered as in force, the validity of their adoption and promulgation having never been doubted, ought not now to be drawn in question. The construction of the statute as

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to voluntary conveyances has been settled by this court. It applies as well to cases where the conveyance was made in contemplation *of creat-
 *205] ing a debt, immediately afterwards contracted, as of debts actually existing at the time. *Sexton v. Wheaton*, 8 Wheat. 242. But here, copies of the accounts, upon which the judgments were recovered, are spread upon the record, by which it appears, that the causes of action on the part of the creditors of the grantor, arose before the date of the deed. The deed itself distinctly stating the consideration upon which it was made, proof of a different consideration was inadmissible. 2 P. Wms. 203 ; 7 Johns. 341 ; 1 Ves. sen. 128 ; 1 Johns. Ch. 341. If the deed was not properly acknowledged and recorded, it was not notice to the party claiming against it. 2 Binn. 44, 51 ; 4 Wheat. 486. The records of the judgments were admissible in evidence, to impeach the validity of the deed, as showing, among other facts, that the grantor was indebted at the time it was executed. The maxim of *res inter alios acta* could not be applicable to this testimony, any more than to other evidence of the grantor being indebted at the time.

February 23d, 1826. THOMPSON, Justice, delivered the opinion of the court.—The premises in question in this cause, are described as in lot No. 107, in the town of Cincinnati ; and it is admitted on the record, that on the 28th day of March 1799, Thomas Doyle, sen., was seised and in possession of this lot. Both *parties derive title under him. The lessor of the
 *206] plaintiff claims under a deed of the date above mentioned, from Thomas Doyle, sen., to his son Thomas. And the defendant sets up a title under a judgment against Doyle, the elder, in favor of John Graff, entered in August 1799. Upon the trial, the validity of the deed from Doyle, the elder, to his son was the main subject of inquiry. Three bills of exception were taken on the part of the lessor of the plaintiff, and a verdict entered by consent, for the defendant, and the case is brought here by writ of error to the circuit court for the district of Ohio.

1. The first bill of exceptions relates to the acknowledgment of the deed from Doyle, the elder, to his son. This was deemed by the court insufficient, and the deed rejected. In the second bill of exceptions, however, the counsel for the plaintiff stated again, that he claimed title under the same deed mentioned in the first exception, by virtue of which Doyle, the younger, became seised in fee of the premises in question, and which had descended to the wife of the lessor of the plaintiff, to which facts he adduced proof, which was submitted to the jury, and to which proof no objection appears to have been made on the part of the defendant. What that proof was, is not stated, but we must presume it to have been enough to prove the due execution of the deed, both because it does not appear to have been objected to, and because the defendant went into evidence to show the deed was
 *207] fraudulent and void, which would have been altogether *irrelevant, if the deed had not been sufficiently proved to be submitted to the jury. This might supersede the necessity of this court expressing any opinion upon the sufficiency of the acknowledgment of the deed ; because, admitting the court below erred in rejecting it, in the first instance, still, as it was afterwards, in the progress of the cause, duly proved, the judgment would not be reversed, on account of that error, if this was the only question in the cause.

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We notice this point only to correct what we consider a misapprehension of the plaintiff's counsel as to the practice in cases of this kind. But as this cause must be sent back to another trial, it is deemed advisable to express an opinion upon the sufficiency of this acknowledgment, the certificate of which is as follows: "Hamilton ss: Personally, before me, Thomas Gibson, one of the justices of the court of common pleas for said county, the above-named Thomas Doyle, and ——— Doyle, his wife, who being examined separate and apart, acknowledged the foregoing deed to be her hand and seal, free act and deed, for the uses and purposes mentioned." The question is, whether this can be taken for the acknowledgment of Thomas Doyle. He only signed the deed. His wife is not named as a party in any manner, except in the conclusion, which is as follows: "In witness whereof, the said Thomas Doyle and ———, his wife, who hereby relinquishes her right of dower in the premises, have hereto severally set their hands, and affixed their seals, the day and year first *above written." A seal is affixed to the deed, but no signature. [*208]

The certificate is insufficient, unless it contains enough to show, with all reasonable certainty, that, in point of fact, Thomas Doyle did appear before the officer and acknowledge the deed. And this, we think, it does not show. It does not even state expressly, that Thomas Doyle appeared before the officer; but if that is to be inferred, the purpose for which he appeared is not stated, so that nothing can be inferred from the mere fact of appearance. It does not set forth that he, in point of fact, did acknowledge the deed, or did any one act that might by possibility be construed into an acknowledgment. The certificate does state that the wife did acknowledge the deed, which, if true, necessarily implies, that she appeared before the magistrate, although that fact is not stated. The form of the certificate is adapted to the acknowledgment of the wife. It states, that being examined separate and apart, she acknowledged the deed to be her hand and seal, free act and deed. The relinquishment of dower, and the affixing of the seal, show that she was intended to be made a party; and if the court was at liberty to conjecture, or indulge any intendment about the real fact, it would be as reasonable, if not more so, to infer, that the wife did appear, and make the acknowledgment certified, and by mistake omitted to sign the deed, than that the husband acknowledged it. But the certificate of acknowledgment ought not to be left in such uncertainty. It is *ex parte* proof *of the deed; and it ought to appear with all reasonable certainty, that the [*209] requisites of the law had been complied with. The deed was, therefore, properly rejected in the first instance.

2. The second bill of exceptions necessarily presupposes that the deed was in evidence before the jury. For it states, that the defendant, in order to prove that the deed was made with intent to defraud creditors, and therefore, void, having read some depositions to prove that fact, offered in evidence the records of two judgments recovered against Doyle, the elder; one in favor of John Graff, on the first Tuesday in August 1799, for upwards of \$900, and the other in favor of Edward Shoemaker, in October term 1800, for about \$500. To the admission of which the plaintiff's counsel objected as incompetent evidence, on the ground that these were proceedings *inter alios*, to which Doyle, the younger, was in nowise a party. The objection was overruled, and the evidence admitted. It will be perceived,

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that the objection to the evidence was specifically placed on the ground, that Doyle, the younger, was not a party to the judgments. And it may well be questioned, whether, when the purpose for which the evidence is offered is specifically avowed, the court will look at it in any other point of view, or inquire whether it might not be proper for some other purpose. As a general rule, we think, the party ought to be confined, in examining the admissibility *of evidence, to the specific objection taken to it. The attention of the court is called to the testimony in that point of view only; and to admit an inquiry afterwards, whether the evidence might not have been admissible for some other purpose, would be sanctioning a course of practice calculated to mislead.

It is unnecessary, however, in this case, to put the question on that ground, for the evidence was admissible in whatever light the objection is taken. The consideration expressed in the deed from Doyle, the elder, to his son, is natural love and affection, and the judgments were introduced to show that the grantor was in debt, at the time of giving the deed, which, as was contended, would render it void as against creditors. This was, therefore, necessarily an inquiry into matters to which the grantee in the deed was not a party. It was certainly competent for the defendant to show that the grantor was indebted, at the time he made the conveyance; this was a necessary step towards establishing the fraud; and if these judgments conduced to prove that fact, they could not be shut out as incompetent evidence. The extent and effect of the evidence was matter for the jury. If the evidence ought to have been excluded, because Doyle, the younger, was not a party to the judgments, the same objection would have lain against the proof of his being in debt to others in any manner whatever; that would have been equally an inquiry into matters to which the grantee in the deed was not a party. *There was, therefore, no objection to the evidence on this *211] ground.

The judgments appear to have been entered some short time after the date of the deed, and it is said, that a voluntary deed is void only as to antecedent, and not subsequent creditors, unless made with a fraudulent intent; and this appears to be the doctrine of this court, as laid down in *Sexton v. Wheaton*, 8 Wheat. 242, after a review of the leading authorities on this question. But copies of the accounts upon which the judgments were founded, are spread upon the record, by which it appears, that the cause of action arose before the date of the deed. If these accounts did not properly form a part of the record, according to the course and practice of the court where the judgments were entered, a specific objection should have been made to their being received in evidence, which would have led to the inquiry, whether they properly formed a part of the record; but as the question is now presented to this court, we cannot say, that these accounts are to be stricken out of the record. They may be looked to, for the purpose of showing that Doyle, the elder, was in debt at the date of the deed; but whether to an extent which would avoid the deed, must depend on circumstances which are not to be inquired into by this court. There was no error, therefore, in the admission of this evidence.

3. The third exception arises on the rejection of certain depositions offered in evidence on the part of the plaintiff. The introductory part of *the bill of exceptions sets out, "that after the admission

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of the evidence aforesaid (the judgment records), and in order to repel the presumption of fraud in Doyle, the elder, and that he had an intention to defraud creditors by making the said deed, but to prove that Doyle, the younger, was the creditor of his father, the evidence was offered." The concluding part of the bill of exceptions alleges, that the depositions were offered to rebut the evidence of fraud in fact, and the evidence of fraudulent intent in the grantor, Doyle, the elder. But the court declared their opinion to be, that the last-mentioned evidence, offered for rebutting the charge of fraud, was inadmissible, and rejected the whole of the said evidence so offered. Looking, then, as we must, to the whole bill of exceptions, to collect its true meaning and import, we must understand the evidence to have been offered for the double purpose of showing that Doyle, the younger, was a creditor of his father, and that by reason thereof, although the consideration in the deed purported to be natural love and affection, it could not be considered as given with intention to defraud creditors; and also to rebut the evidence of fraud in fact, and to show the character and situation of Doyle, the elder, in point of property, at the time he executed the deed in question. If the testimony offered was admissible for either of the purposes above stated, the court erred in rejecting it.

*That the evidence was proper for the latter purpose, cannot be questioned. The charge against the grantor was, that he was guilty [*213 of fraud in fact, in making the deed to his son; that it was done for the express purposes of defrauding his creditors; and it was proper evidence, therefore, to rebut this allegation, to show that the grantor had the means of paying his debts, independent of the property conveyed to his son. Whether the evidence would have made out that fact to the satisfaction of the jury, is not for this court to inquire. If it conduced to make out that fact, it should have been submitted to the consideration of the jury. A deed from a parent to a child, for the consideration of love and affection, is not absolutely void as against creditors. It may be so, under certain circumstances; but the mere fact of being in debt to a small amount, would not make the deed fraudulent, if it could be shown, that the grantor was in prosperous circumstances, and unembarrassed, and that the gift to the child was a reasonable provision, according to his state and condition in life, and leaving enough for the payment of the debts of the grantor. The want of a valuable consideration may be a badge of fraud, but it is only presumptive, and not conclusive, evidence of it, and may be met and rebutted by evidence on the other side. The evidence offered to show that Doyle, the elder, was indebted to his son to an amount equal to the value of the property conveyed to him, was declared also to be for the purpose of repelling the presumption *of fraud in fact, and to show that there [*214 could have been no such intention to defraud his creditors, by putting his property out of their reach, without receiving any real and adequate consideration for it. Doyle, the elder, might have sold the land to his son, or to a stranger, for a valuable consideration, and given a good title for the same, although his debts might have been double in amount to the value of his property, unless his creditors had acquired a lien upon it. It would have been no fraud, in judgment of law, against his creditors, for him to have paid one, and left the others unpaid. Had the evidence been offered for the purpose of showing that the deed was given for a valuable consideration, and

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in satisfaction of the debt due from the father to the son, and not for the consideration of love and affection, as expressed in the deed, it might well be considered as contradicting the deed. It would then be substituting a *valuable*, for a *good*, consideration, and a violation of the well-settled rule of law, that parol evidence is inadmissible to annul, or substantially vary, a written agreement.

But that was not the object for which the evidence was offered, nor the effect it was intended it should have. It could not, in any respect, vary or alter the deed, or give to it a different construction or operation between the parties to it. The defendant had attempted to invalidate the deed, by going into proof of circumstances out of the instrument itself, and unconnected with it, and which circumstances, it was contended, *showed *215] a fraudulent intention in the grantor, in conveying the lot in question to his son. And the evidence of the father's being indebted to the son, was to meet and repel the presumption of fraud which was attempted to be raised against the deed, by reason of such extrinsic circumstances. The evidence which has been admitted to show the fraud, and that which was offered to rebut it, related to collateral and independent facts unconnected with the deed, and could not, therefore, in any manner, vary or alter its terms.

The third exception was, accordingly, well taken. The judgment of the court below must, therefore, be reversed, and the cause remanded, with directions to issue a *venire de novo*.

Judgment reversed.

LITTLEPAGE v. FOWLER and others.

Land-law of Kentucky.

The following entry is invalid, for want of that certainty and precision which the local laws and decisions require: "January 27th, 1783, J. C. L. enters 20,000 acres of land on twenty treasury warrants, No. 8859, &c., beginning at the mouth of a creek falling into the main fork of Licking, on the north side, below some cedar cliffs, and about 35 miles above the Upper Blue Licks, and running from said beginning up the north side of Licking, and bounding with the same as far as will amount to ten miles when reduced to a straight line, thence extending from each end of said reduced line, a northerly course, at right angles, to the same, for quantity."

*216] *Appeal from the Circuit Court of Kentucky.

February 14th, 1826. This cause was argued by *Bibb*, for the appellant; (a) and by *Talbot*, for the respondent. (b)

(a) Citing, *Johnson v. Pannel*, 2 Wheat. 211; *Hite v. Graham*, 2 Bibb 143; *White v. Wilson*, 3 Id. 542; *Whitaker v. Hall*, 1 Ibid. 79; *Bodley v. Taylor*, 5 Cranch 224. *McGee v. Thompson*, 1 Bibb 132; *Marshall v. Currie*, 4 Cranch 176, 177; *Bush v. Todd*, 1 Bibb 64; *Whitaker v. Hall*, Id. 73; *Roberts v. Huff*, *Hardin* 382; *Taylor v. Kincaid*, Id. 82; *Bowman v. Melton*, 2 Bibb 153.

(b) He cited *Hite v. Graham*, 2 Bibb 144; *McKee v. Bodley*, Id. 482; *Whitaker v. Hall*, 1 Id. 79; *Craig v. Hawkins*, Id. 53; *Smith v. Walton*, 3 Id. 153; *Carland v. Rowland*, Id. 127; *Webb v. Bedford*, 2 Id. 259; *Greenup v. Lyne*, Id. 370; *Mercer v. Irvins*, Id. 471; *Landrum v. Hite*, 1 A. K. Marsh. 419; *Bartas v. Calhoun*, 2 Id. 169.