

5. It is an established rule in the law of fraudulent conveyances that the rights of a creditor, whose claim is contingent at the time of the transfer, is as fully protected as one whose claim has been accrued. Rogers, et al. v. Marchant, 91 F2d 660 (1937).

6. Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony. Coleman v. Daniel, supra.

7. This proceeding is one instituted by a judgment creditor for his interest alone, and whose legal diligence has pursued the property into this court; and he is entitled to a preference as the reward of his vigilance over those who have slept upon their rights. Seabury, Receiver, v. Hall, 171 SC 489, 172 SE 866 (1933).

8. The court concludes that the conveyance of January 31, 1977, from Defendant, Tom S. Bruce, to his wife, the Defendant, Mary E. Bruce, was in violation of §27-23-10, South Carolina Code of Laws of 1976 in that it operated as both an actual and a constructive fraud as to the Plaintiff, Robert L. Kosnoski; that the transferee, Mary E. Bruce, has neither established a valuable consideration nor the bona fides of the transaction by clear and convincing testimony; that at the time of the conveyance, Robert Kosnoski was a contingent creditor whose rights are protected; that in the final event the property of Tom S. Bruce is not sufficient to pay his debt to Robert Kosnoski which thereafter accrued; and that the deed from Tom S. Bruce to Mary E. Bruce dated January 31, 1977, is void as to Robert Kosnoski.

9. With regard to Mary E. Bruce's claimed special equity interest, which she likens unto community property, I conclude that although as between Tom S. Bruce and Mary E. Bruce inter sese there may be an equitable distribution under appropriate judicial proceedings, such distribution may not be had to defeat the lien of a judgment creditor. Even in states having community property laws it is held that when a husband as manager of the community incurs a debt it is presumptively a community debt, and even if the husband and wife divorced and the property was awarded to the wife as her separate property

1002

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