and in furtherance of a conspiracy between the parties thereto, to delay hinder and defeat the said Sewell and Murray and the other creditors of the grantor and this is the question now to be decided by this Court. Baxter and wife answered jointly but as he professes to have no knowledge of the circumstances charged in the bill, except as derived from his wife the answer so far as he professes to speak need not be adverted to the questions in issue between the parties grow out of the answer of Mrs. Baxter, she attempts to support the deed by alleging, and attempting to prove that the land was purchased by her father for her and paid for with her money acquired from her uncle James Helm, in the mode pointed out in the answer. She repudiates the idea that the deed was simply voluntary in consideration of natural love and affection and charges that her father, having received her money applied a portion of it towards the purchase of the land mentioned in the deed and that her father at the time of making the purchase and frequently afterwards, told respondent that the deed should be given to her for said lands with which arrangement she was satisfied. To the evidence offered to support this view of the case the complainant has excepted and it appears to me clear upon the authorities, that it is inadmissible. The deed upon its face, is voluntary the nominal consideration of five dollars mentioned in it, in addition to the consideration of natural love and affection being introduced simply to give it the character of a bargain and sale and the question therefore is whether it is competent to the grantee in this deed to show by parol, that it was not a voluntary settlement by her father upon her but that the land conveyed to her by the deed was purchased and paid for by her father with her money. The decisions in this State, are conclusive to show that parol proof is inadmissible, to vary the consideration stated in deeds and thereby either to alter their character, or to maintain them when impeached for fraud by showing considerations, differing from those mentioned in them. The cases of Wesley vs Thomas 6 H. and J. 24. The Union Bank vs Bells 1 Har & Gill 175. Wolfe vs Hanver 1 Gill 84, Coles vs Albert & Runge 1 Gill 413, and the cases cited therein place this question beyond all controversy. In the last case the doctrine of the inadmissibility of parol proof, of a different consideration from that stated in the instrument was fully maintained though it was allowed to the party in that case to offer evidence of the same kind of consideration varying only in amount from that expressed, I am therefore of opinion, that if this deed of October 1819 can be maintained at all it must be as a voluntary settlement by a father upon his daughter in consideration of natural love and affection, authorities of imposing weight are to be found, in the Books that any indebtedness at the time of executing such a settlement, will avoid it. That the inference of fraud thence deducible is an inference of law incapable of explanation and therefore that every voluntary conveyance is fraudulent with reference to pre existing creditors though the grantor may have abundent means independant of the property conveyed to satisfy all his creditors, This doctrine however in all its strictness does not obtain in this State, it being hence conclusively settled that an indebtedness at the time of the voluntary conveyance, is prima facie only and not conclusive evidence of a fraudulent purpose even with respect to a prior creditor and that this presumption may be repelled by showing that the grantor, or donor at the time of the gift was in prosperous circumstances possessed of ample means to discharge all his

pecuniary obligations and that the settlement upon the child was a reasonable provision according to his or her station and condition in life. Worthington and Anderson vs. Shipley 5 Gill 449. But though the rule is mitigated still if the grantor be shown to be indebted at the time of the conveyance it is prima facie fraudulent with respect to creditors and the burden is thrown upon the grantee of establishing the circumstances, which shall repel the fraudulent intent, the deed stands condemned as fraudulent upon the rights of creditors, unless the facts, which may give it validity are brought before the Court by the grantee. In this case there can be no dispute that Joshua Swann the father was indebted at the time of the conveyance. His single Bill to Charles Sewell for $380 dated in 1816 is proof of this and I think the presumption is that the Judgments recovered against him by Sewell, and Murray, in 1821 were for monies due from him prior to the deed. But at all events the amount expressed in the single Bill must be assumed to have been and if so with respect to this creditor, the deed is prima facie fraudulent and can only be supported by evidence of the facts which repel the presumption. The question then is, does this record furnish evidence that at the time of making this voluntary conveyance to his daughter the grantor was in prosperous circumstances possessed of abundent means, to discharge his engagements, and that the settlement upon his daughter, was a reasonable one.

In answer to the obligation of the Bill that the grantor continued in the possession and use of the property after the conveyance this respondent Mrs. Baxter says, that she admits that said Joshua Swann did occupy said lands from the date of said deed up to the time of his death, that this Respondent resided upon said lands during a large portion of said period, she believes for nine or ten years and do permitted her said father to occupy the same as averred in Complainants bill because her said parent was poor and afflicted and because she was enabled to live without taking to her own use the profits of said lands, that the respondent never supposed that an act of kindness to a poor and aged parent could in any degree impair her title under the deed aforesaid. Now looking to this answer it is not possible to suppose, that the grantor of this property was in prosperous circumstances, with ample means to pay his debts. On the contrary it appears that he became dependant upon his daughter for a home and livelihood. This is the inevitable presumption from the answer, and there is no proof or attempt to prove, that he held any other property – For aught that appears he was absolutely destitute of means, and therefore, treating the deed as a voluntary one it must fall when set up against the claims of pre-existing creditors, even under the less stringent doctrine upon the subject, established in this State.

But it has been supposed, that even if the defendants Baxter and wife cannot defend their title upon the deed of the 22nd February 1819 they may rely with success upon that of the 28th of October 1818 from Murray the Sheriff to Joshua Swann, by showing that the consideration money paid by the latter, to the Sheriff, was the money of of Mrs Baxter, as alleged in the answer. That is, that upon such proofs, a trust would result, to the party whose money actually paid for the property. It has been contended by the Complainants Counsel that parol proof is inadmissible to establish the fact of such payment and the evidence is excepted to as inadmissible. The exception however in my opinion cannot be maintained. Resulting trusts implied by law, from the manifest intention of the parties, and the nature and justice of the case are expressly excepted from the operation of the Statute of frauds, and the fact of payment, may be established