8. I find that the Defendants have not established the bona fides of the conveyance of January 31, 1977, by clear and convincing testimony and evidence.

CONCLUSIONS OF LAW

1. §27-23-10 of the Code of Laws of South Carolina for 1976 provides that every gift, grant, alienation and conveyance of lands which may be had or made to or for any intent or purpose to delay, hinder or defraud creditors and others of their just and lawful actions, suits and debts shall be deemed to be clearly and utterly void, frustrate and of no effect as to such creditor.

2. The South Carolina courts, interpreting this statute, have held that conveyances be set aside under two considerations: First, where the transfer is made by the grantor with the actual intent of defrauding his creditors where that intent is imputable to the grantee even though there is a valuable consideration; and, second, where a transfer is made without actual intent to defraud grantor's creditors but without consideration. Coleman v. Daniel, 261 SC 198, 199 SE2d 74 (1973).

3. A voluntary deed may be set aside at the instance of an existing creditor upon the ground of constructive or legal fraud, even where there is not the slightest taint of actual or moral fraud in the transaction, for the law will not permit one who is indebted at the time to give his property away, provided such gift proves prejudicial to the existing creditors. Chas. M. Betts & Co. v. Richardson, 112 SC 279, 99 SE 815 (1919).

4. It is a settled rule of law that one who is in debt cannot make a voluntary conveyance which will prevail against existing debts; the test of the donor's legal capacity to give, as against existing creditors, depends upon his final solvency - that is to say, not upon his solvency at the time the gift is made; if in the final event the property of the debtor is not sufficient to pay his debts existing at the time of his voluntary conveyance, then such conveyance is null and void as to such debts. Penning, et al. v. Reid, et al., 167 SC 263, 166 SE 139 (1932).