

and as to whether this had been done in this case he said: "It is not contended in this case, nor could it be, that there is any direct evidence, that Childs at the date of the deed, intended to make application for the benefit of the insolvent laws; but it is said, that such intention may be established by facts and circumstances as in other cases, and the case of *Dulaney vs. Hoffman*, 7 *Gill & Johns.*, 170, is referred to in support of the proposition. There can be no doubt that such is the rule, and the inquiry then is, whether the facts and circumstances of this case are sufficiently strong to make out the intent.]

THE CHANCELLOR :

Now, whether the answer of Childs is or is not evidence against the plaintiff, there can be no doubt that the burden of proof is upon him, and that he can get no decree invalidating this deed, unless he can make out by satisfactory evidence, that Childs, on the 4th December 1833, the date of its execution intended to take the benefit of the insolvent laws; that such was his view and expectation at that time.

Now, the first difficulty in the way of the plaintiff, and it seems to me a formidable one, is, that Childs when he executed the deed by which the alleged preference was given, could not apply for the benefit of the insolvent laws, for want of the residence required, to bring him within their provisions. He had then been living but a short time in Maryland, and many months must elapse, before the relief contemplated by those laws could be extended to him. How it may be asked can it be said that he executed the deed with a view, and under an expectation of taking the benefit of laws, the provisions of which he was in no condition to enjoy, because of the indispensable prerequisite of a two years residence which he did not possess, It is true, (though he denies it in his answer,) he may have known that special acts of insolvency were sometimes granted, and that laws were occasionally passed, dispensing with some of the conditions upon which the general system was administered; and he may have contemplated an application to the legislature to dispense in his case, with the qualification of resi-