

Yet, if such payment or transfer be made with a view, or under an expectation, of taking the benefit of the insolvent laws, and with an intent thereby to give an undue and improper preference to such creditor, then, such payment and transfer are void under the provisions of our insolvent system.

The distinctions recognised in England between voluntary and involuntary transfers, are applicable to our insolvent system, and to avoid such transfers, for fraud upon that system, they must be shown to be *voluntary*, as well as made with a view and under an expectation of taking the benefit of the insolvent laws.

The act of 1834, ch. 293, effected two alterations in the system, so far as the city and county of Baltimore are concerned. 1st, It invalidated the transfer, whether made upon request or not. 2d, No such transfer could be made in favor of one creditor to the prejudice of the rest, if the debtor making it shall have had no reasonable expectation of being exempted from liability or execution for, or on account of, his debts, without applying for the benefit of the insolvent laws.

Yet, under this act, there must be found, in the transfer or assignment, an intention to *prefer* one creditor over another; or, notwithstanding, the party had no reasonable expectation of escaping a recourse to the insolvent laws for relief, the transfer or assignment will stand, and as the deed in this case made no such preference, it was held valid.

[This case was commenced on the equity side of Baltimore County Court, and removed to this court.

The bill stated, that on the 30th April, 1847, Henry Keene, of Baltimore city, being in insolvent circumstances, and in contemplation of applying for the benefit of the insolvent laws, assigned, by deed of that date, all his property, of every description, to the defendant, to be by him applied to the payment of the insolvent's debts; first deducting therefrom a commission of eight per cent. for himself, and his expenses. That, on the 7th of May, following, Keene applied for, and obtained, the benefit of the insolvent laws, and the complainant was duly appointed his permanent trustee. And, that the defendant has refused to deliver said property to the complainant, though requested so to do. The bill prayed, that a decree might be passed, setting aside the deed of assignment, as fraudulent, and requiring the property to be delivered to the complainant. The answer of Hall, denied that the deed was made in contemplation of applying for the benefit of the insolvent laws, said application only having been made in consequence of a refusal