

A difficulty, however, occurred to me at one time, respecting the right of the complainant, who is the permanent trustee in insolvency of Spindler, the grantor, to file a bill to vacate conveyances made by him as fraudulent, under the provisions of the statute of Elizabeth—I thought it might perhaps be doubted, whether, as the conveyances were good against the grantor himself, his insolvent trustee could be permitted to impeach them. Subsequent reflection, however, and an examination of one or two of the cases, has satisfied me that the doubt is not well founded; and that unless the trustee may maintain such a suit, the creditors of the insolvent, who are prejudiced by the conveyance, might be without remedy altogether. According to the principles settled by the Court of Appeals in *Alexander vs. Ghiselin et al.*, 5 Gill, 138, the whole estate of the insolvent, whatever may be its condition, passes into the hands of the trustee, to be by him managed for the benefit of his creditors, who are deprived by operation of the insolvent system, of the right to pursue in their own names, any remedy against the property of the debtor, however it may be situated at the time of his application for relief.

It is true, that if there be a surplus after the payment of the claims of creditors, it will be enjoyed by the insolvent, and so far, and to that extent, the annulling the conveyances operates to his benefit, but still as the property or its proceeds must be in the first place applied to the payment of the creditors, the power of the court must be regarded as exerted chiefly for them; and if the conveyance is void as against creditors, under the statute of Elizabeth, it would seem proper to permit the trustee to institute proceedings for the purpose of vacating it, as otherwise the creditors, though wronged, would be without remedy.

In Virginia, the sheriff, when a debtor takes the insolvent oath, and delivers in a schedule, is vested by the act of assembly with all the insolvent's estate, rights and interests; and as the Court of Appeals of that state said, in the case of *Shirley vs. Long*, 6 Randolph, 748, "he represents both the insolvent and the creditors," "and it would be strange, that if the insolvent were to convey away half his property, and this most