

JOHN GLENN, TRUSTEE OF
BENJAMIN CHILDS
VS.
WILLIAM BAKER AND BEN-
JAMIN CHILDS.

SEPTEMBER TERM, 1847.

[INSOLVENT LAWS—UNDUE PREFERENCE—RULES OF EVIDENCE.]

To avoid a deed under the acts of 1812, ch. 77, and 1816, ch. 221, it is necessary to show, not only that an undue and improper preference was given by the debtor, but also, that this was done with a view or under an expectation of taking the benefit of the insolvent laws.

Such intent may be established by facts and circumstances, as in other cases.

The fact that a party, when he executed the deed, could not apply for the benefit of the insolvent laws, for want of the residence required, to bring him within their provisions, is a strong circumstance to show that such was not his view and expectation at that time.

The facts of this case are distinguished from those of *Dulaney vs. Hoffman*, 7 Gill and Johns., 170.

It is an established rule of evidence in this state, that the answer of one defendant, in chancery, is not evidence against the other defendants.

The answer of one defendant, when responsive to the bill, is evidence against the plaintiff in favor of the other defendants.

Where the rights of the insolvent are identically the same, whether the decision passes one way or the other, he would be a competent witness for either party.

[In the year 1833, Benjamin Childs, one of the original defendants, (since deceased,) who had resided in Pennsylvania, for several years, removed into this state, and engaged in mercantile business in Baltimore. On the fourth of December, of the same year, and but a few months afterwards, finding himself in embarrassed circumstances, he executed to the defendant, Baker, a deed of all his estate of every description, in trust, in the first place to pay the necessary expenses of executing the trust and five per cent. commission on all moneys received by the trustee, in virtue thereof; secondly, to pay in full, certain specified debts; thirdly, to pay in full, or rateably in case of a partial deficiency of the trust fund, such of the creditors of the grantor as should in a specified time assent to the terms of the deed, and release all demands against him to the day of its date; fourthly, to the use of the other creditors of the grantor;