

and fifthly to pay the surplus to the grantor, his executors, administrators or assigns. At December session, 1833, Childs applied to the legislature for a special act, which was passed on the 27th February, 1834, authorising the insolvent commissioners to extend to him the benefit of the insolvent laws without requiring the usual proof of a two years residence in the state. His application under this act was made on the 10th March following, and the complainant was appointed his permanent trustee. Sundry creditors of Childs assented to the terms of the deed, and in consideration of the provisions made in it for the payment of their debts, released and discharge him therefrom. It appeared from the proof that the said Childs was insolvent when he removed into the state and continued so down to the time when the deed was executed, prior to which time there were suits and judgments against him.

The bill was filed by the complainant to have this deed set aside as fraudulent under the insolvent laws, it having been made in contemplation of applying for their benefit. The answers denied that Childs at the time of executing said deed intended applying for the benefit of the insolvent laws, or that he knew himself to be insolvent, and the separate answer of Childs stated his ignorance, at the time of executing the deed, of the possibility of his obtaining a special act of the legislature in his favor.

The Chancellor, after stating the facts of the case, referred to the cases of *Heckley vs. Farmers and Merchants' Bank*, 5 G. & J., 377, and *Crawford & Sellman vs. Taylor*, 6 G. & J., 332, to show that the meaning of the acts of 1812, ch. 77, and 1816, ch. 221, making void any deed, &c., to a creditor, made by any person with a view, or under an expectation of being or becoming an insolvent debtor, and with an intent thereby to give an undue and improper preference to such creditor, was, that the party executing the deed, shall at the time, "intend to take the benefit of the insolvent laws." He said it was 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,"