

dence ; but this seems to me to be a strained and unnatural view of the motives which probably influenced him at the time, and one which could not safely be adopted, unless supported by positive proof, or pregnant circumstances. This moreover is not the allegation of the bill, which avers, that the deed was made by Childs, "when he knew himself to be insolvent, and contemplated applying for the benefit of the insolvent laws of Maryland." Such an averment appears to me, to be inapplicable to a party, to whom the law in its then state, did not extend.

Conceding that the evidence in this case does show, that Childs was in fact in insolvent circumstances at the date of the deed, and that he knew himself to be so, (though this is likewise denied by his answer,) there is nevertheless not wanting evidence, independently of the fact, that he was not entitled at that time to apply for the benefit of the insolvent laws, going to repel the presumption that he contemplated such an alternative.

There is not such a resemblance between the circumstances of this case and the case of *Dulaney vs. Hoffman*, relied upon by the counsel for the plaintiff, as would make the judgment pronounced in the one, a safe precedent to be followed in the other. The points of difference between them, if not numerous, are strong and palpable and present abundant room for a different determination. In *Dulaney vs. Hoffman*, there existed no impediment to an immediate application, by the parties making the obnoxious preference, for the benefit of the insolvent laws, and in point of fact their application pressed rapidly upon the heels of the transfer. In this case, at the time of the transfer complained of, the party making it was in no condition to apply at all, nor did he make his application for more than three months afterwards. In that case there was no attempt whatever to compromise with or appease the unpreferred creditors, a circumstance of so much weight, as to be more than once mentioned by the Court of Appeals in delivering their opinion. In this, there was not only an effort to adjust their other debts, but several of the creditors who were not preferred,