

actually released the petitioner upon the terms specified in the deed. In that case the debts due to the favored creditors had not then matured, and were at the time of the transfer wholly unprovided for; whilst in this, the preferred parties held collaterals to a larger nominal amount than the debts due them, and might therefore be regarded as preferred, even before the execution of the deed. In that case, there was an actual transfer and delivery to one of the selected creditors, for the benefit of himself, and others similarly situated, of the entire stock in trade of the insolvents, with directions to sell the same, and to apply the money to the payment exclusively of those creditors, without any reference whatever to the rest; although they knew, that many of them must necessarily go unsatisfied. Whilst in this, though a preference is given to one class, the deed professes to provide for others, and holds out inducements to them to accede to its provisions.

These differences between these cases are, I think, sufficiently broad and distinct, to separate them by a well defined line, and to render a conclusion perfectly sound as to the one, altogether erroneous as to the other.

The preceding observations have been made without reference to the answer of Childs, and upon the hypothesis that his answer cannot be read as evidence against the complainant.

If the answer can be read, then it is manifest, that the difficulties in the way of the plaintiff are greatly increased.

The question, therefore, is, may it not be read by the defendant Baker, as evidence against the complainant?

It is the established rule in this state, that the answer of one defendant in chancery, is not evidence against the other defendants—the Court of Appeals having so expressly decided, in opposition to the cases of *Field vs. Holland*, 6 *Cranch*, 8, and *Osborn vs. The U. S. Bank*, 9 *Wheat.*, 738, in which under the circumstances of those cases, a different rule was settled. *Jones vs. Hardesty*, 10 *Gill & Johns.*, 464. But that is not the question here. It is not an attempt to read the answer of a defendant against his co-defendant, but the proposition is, may not one defendant read the answer of a co-defend-