of all authority in support of it, I am persuaded it was not very fully examined.

The argument of the complainant's council, in opposition to the admissibility of this answer contends, that the defendant should not have the benefit of it as evidence, because he might have examined Childs as a witness—a privilege which he insists the plaintiff had not, upon the ground, that his interest in the surplus of the estate, if any, in the hands of the trustee Glenn, disqualified him.

Now, in the case of *Hickley* vs. *The Farmers & Merchants' Bank*, 5 *G. & J.*, 377, the complainant, the trustee of an insolvent debtor did examine the insolvent upon this very question, and the decision of the Court of Appeals turned entirely upon his evidence. But, independently of authority, is there, upon principle, any weight in the objection to the insolvent as a witness for his trustee, upon a bill filed by him, to set aside such a deed as the present? The objection is, that if the plaintiff succeeds, he, the witness, will be entitled to the surplus of the estate, after his debts are paid. But is not this the precise condition of things under the impeached deed to the defendant, Baker? Does not that deed say, that after the payment of debts, the surplus, if any, shall be paid over to the grantor, his executors, administrators or assigns, and is there not, therefore, an exact equipoise, rendering it perfectly indifferent to the insolvent, in point of interest, whether the decision passes one way or the other.

This is not like the case of an action brought by the trustee of an insolvent debtor, against one of his debtors, in which the insolvent would not be a competent witness for the plaintiff without leasing his interest in the surplus, because his proof would go to swell a fund, in which he would, in a certain event, have a right to participate.

But the question here is, simply, which of two trustees shall administer the fund, the rights of the insolvent being identically the same, let the result be what it may. Under such circumstances, I think, there is such an equilibrium of interest, that the insolvent would be a competent witness for either party, and so