

EVIDENCE—Continued.

- such, and abandoned it as a debt. Although this proof consisted entirely of the parol declarations of the testator, unaccompanied by any other statements, or papers of any description. Authorities on this subject reviewed. *Linthicum vs. Linthicum*, 21.
8. Cases of this description distinguished from gifts *inter vivos*, and *donationes mortis causa*, to perfect which, there must be an actual delivery, according to the manner in which the particular thing, the subject of the gift, is capable of being delivered, and without which delivery, the gift is invalid, both at law and in equity. *Ib.*
 9. Where a fund is to be applied to one of two sets of creditors, a party liable to both, and who has been released from the costs of the suit, is a competent witness in the case. *Ohio Life Ins. & Trust Co. vs. Winn & Ross*, 25.
 10. John and William Hammond, partners, being indebted to the Union Bank, in the sum of \$5,000, on the 21st of February, 1832, gave their note for the same at 60 days, in the partnership name, payable to the bank in its corporate name, which was secured by the pledge of 64 shares of the stock of the bank, standing in the name of James McCormick. This not being paid at maturity, and the partnership, in the mean time, being dissolved, on the 24th of April following they gave a new note, in their individual names, payable to the cashier of the bank at 28 days, which became due on the 25th of May, and on the 25th of June, 1832, was paid by said McCormick, with money which he admits, in his answer, he received from the Hammonds, two days before, but, as he avers, with no knowledge of their business, or indebtedness. The Hammonds petitioned for the benefit of the insolvent laws in September and October, 1832. The complainant seeks the repayment of this \$5,000, on the ground that it was paid to the bank, in fraud of these laws. John L. Hammond, one of the partners, and the only witness in the case, proved, that about the 21st of May, 1832, when they had not available means to pay their debts, an arrangement was made by witness, his brother and clerk, and said McCormick, to pay the bank the note in question, out of bills due the firm. That witness objected to this arrangement, because they expected to compound with their creditors, and he did not wish to give a preference to one over another, but to make an equal distribution of assets among their creditors, it was HELD,
That this proof was not sufficient to establish that this preference was given with a view, or under an expectation, on the part of the Hammonds, of taking the benefit of the insolvent laws, and was not, therefore, void under the insolvent system of this state. *Stewart vs. Union Bank*, 58.
 11. The vitiating intent may be established by circumstantial proof: but such proof is entitled to less influence when it is manifest that direct evidence upon the question was within reach. *Ib.*
 12. The rule of evidence, that neither the husband or wife can be witnesses for or against each other, applies to a case in which the husband is offered to testify in favor of the wife, in reference to her separate estate. *Williamson vs. Morton*, 94.