

UNDUE PREFERENCE—*Continued.*

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, and 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 et al.*, 58.

2. This transaction occurring prior to the act of 1834, ch. 293, must be shown to be void, if void at all, under the act of 1812, ch. 77, sec. 1, or the act of 1816, ch. 221, sec. 6. *Ib.*
3. At common law, a debtor in failing circumstances has an unquestionable right to secure one creditor to the exclusion of others, either by payment or a *bona fide* transfer of his property. The *onus probandi* is, therefore, upon the party who seeks to disturb such preference, to show that it is prohibited by our insolvent system. *Ib.*
4. 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.*
5. It is well established that by the common law, a debtor may secure one creditor to the exclusion of others either by payment or a *bona fide* transfer of his property. *Powels vs. Ditley*, 119.
6. The transfer to a favored creditor, to be void under our insolvent system, must be made with a view, or under an expectation of taking the benefit of the insolvent laws, and also with intent thereby, to give him an undue and improper preference—both intents must be found to exist, or the transfer will not be disturbed. *Ib.*
7. The intent may be deduced as in other cases from facts and circumstances; but these must be such, as by fair inference, will bring the mind to the conclusion, that the unlawful intent existed. *Ib.*
8. The circumstances of this case distinguished from those of *Dulaney vs. Hoffman*, 7 *Gill & Johns.*, 107. *Ib.*

USURY.

1. The statute against usury cannot be evaded by any shift or device, and no matter what the form of the transaction may be, the courts will explore the real truth, and if they discover that the object was a loan of money at more than the legal interest, it will be condemned. *Brown vs. Waters*, 201.
2. A renewal of the usurious contract between the same parties, partakes of the infirmity of the original agreement; but, if the latter is discharged, or is made the consideration of a contract entirely new, as being with a third party, not a party to the original contract, or to the usury paid, or as combining other parties and considerations, and not being a contrivance to evade the statute, the usury laws do not apply *Ib.*