any other ground than as being condemned by our insolvent system; because, independently of that system, and according to the common law, there can be no doubt of the power of a debtor to secure one creditor to the exclusion of others, either by a payment, or *bona fide* transfer of his property.

The question, then, and the only question to be considered, is, so far as this view of the subject is concerned, was the act done by the Hammonds "with a view or under an expectation of being or becoming insolvent debtors, and with an intent thereby to give an undue and improper preference," or, in other words, as those terms have been expounded by the Court of Appeals, was the act done with a view or under an expectation of taking the benefit of the insolvent laws?

The question does not appear to me to be free from difficulty; but after a very attentive consideration of the pleadings and proofs, I do not think the plaintiff has succeeded in making out such a case as to justify this court in granting him the relief he asks for.

The transaction, if void at all, must be shown to be within the act of 1812, ch. 77, sec. 1, or 1816, ch. 221, sec. 6; the previous laws, passed in 1805 and 1807, do not apply to it, because they leave untouched the validity of a deed or transfer given *bona fide* by a debtor to a favored creditor, though they visit upon the debtor giving such a preference, the penalty of withholding from him the benefit of the law. Nor does the act of 1834, ch. 293, comprehend this case, because that act was passed subsequently to the application of these parties, to be discharged under the insolvent laws. We are, therefore, confined to the acts of 1812 and 1816, and are to see whether the facts of this case bring it within the provisions of those laws, as they have been construed by the courts.

Debtors in failing circumstances having an unquestionable right at the common law, to prefer one creditor to another, it is incumbent on a party who attempts to disturb such a preference, to show by evidence that it is prohibited by our insolvent system. The *onus probandi* is upon him; and although the vitiating intent with which the preference is charged to have been