

preferences, with the exceptions aforesaid, shall be void, howsoever the same may be made; provided, the grantor or party creating said lien or preference shall be proceeded against under section 23 of this article, or shall apply for the benefit of this article under section 1 within four months after the recording of the deed or conveyance or the creation of said lien or preference, and shall be declared or shall become, under the provisions of this article, an insolvent; provided, that nothing in this section shall apply so as to set aside or render invalid the lien of any such judgments, mortgage or other conveyance executed by the debtor for money *bona fide* loaned or paid at the time of the creation of such judgments, mortgage or conveyance, but such shall remain a valid and subsisting lien, although the debtor may be proceeded against under or may apply for the benefit of this article.

**When conveyances, etc. are fraudulent and void.**

If the conveyances are in other respects valid and there are no proceedings in insolvency within the prescribed time, the conveyances are good. The term "insolvency" as used in this section means an inability to pay debts as they become due in the ordinary course of business. Intention of this section; when a party subjects himself to its provisions. *Castleberg v. Wheeler*, 68 Md. 275.

An attempt to set aside a conveyance as fraudulent and made in contemplation of insolvency, denied. What must be established to avoid such a conveyance? Lapse of time between the conveyance and the application in insolvency. *Powles v. Dilley*, 9 Gill, 231; *Beatty v. Davis*, 9 Gill, 218; *Malcolm v. Hall*, 9 Gill, 180; *Powles v. Dilley*, 2 Md. Ch. 123; *Glenn v. Baker*, 1 Md. Ch. 76. And see *Brooks v. Thomas*, 8 Md. 371; *Dulaney v. Hoffman*, 7 G. & J. 175; *Hickley v. Farmers' Bank*, 5 G. & J. 380.

It is immaterial whether the preferences appear upon the face of a written instrument, or are created by payments, transfers or otherwise, they are all void. When they are made the basis of an adjudication, the latter *ipso facto* strikes them down. *Vogler v. Rosenthal*, 85 Md. 45. See also, *Applegarth v. Wagner*, 86 Md. 475.

A judgment to the effect that a party is not entitled to a discharge because of having made a deed to B. which was a preference, is not an adjudication *in rem* and conclusive upon the rights of B. The status of the property is not involved in such verdict and it is not evidence against B. After the lapse of twenty years an insolvent estate is presumed to be closed, and equity will not entertain a bill to set aside conveyances made by the insolvent before his application unless it is satisfied that there are subsisting debts due by the insolvent. Both the intent to take the benefit of insolvency and to give an unlawful preference, must appear to bring an act under this section. Proximity of time as an element in determining such intent. *Syester v. Brewer*, 27 Md. 313. See also, *Maennel v. Murdock*, 13 Md. 177; *Powles v. Dilley*, 9 Gill, 222.

Whatever is the necessary consequence of an act deliberately done, the law presumes every man to intend. When the *quo animo* becomes an inference of law. *Gardner v. Lewis*, 7 Gill, 404.

The fact that a debtor at the time he executed a conveyance could not apply for the benefit of the insolvent laws, is a strong circumstance to prove that it was not executed in contemplation of insolvency. *Glenn v. Baker*, 1 Md. Ch. 76.

The reservation in a deed for the benefit of creditors of a fee for the draftsman of the deed is a preference. *Wolfsheimer v. Rivinus*, 64 Md. 235.

For conveyances, etc., held to be preferences and void, see *Clark Co. v. Colton*, 91 Md. 207; *Applegarth v. Wagner*, 86 Md. 475; *Whedbee v. Stewart*, 40 Md. 421.

For conveyances held to be *bona fide*, and hence within the proviso contained in the last clause of this section, see *Nicholson v. Schmucker*, 81 Md. 464; *Hinkleman v. Fey*, 79 Md. 114.