

insolvent in fact, and that he did not then contemplate availing himself of the benefit of the provisions of the insolvent laws.

Now, this answer being responsive to the averments of the bill, cannot be overruled, unless contradicted by the testimony of two witnesses, or by one sustained by pregnant circumstances. There is no pretence that he is contradicted by a witness, and circumstances standing alone, the Court of Appeals have said, will not destroy the answer. *Roberts et al. vs. Salisbury*, 3 G. & J., 426. It has been urged that there is a contradiction or manifest inconsistency between the affidavit made by Brown to the first conveyance, and his answer to the bill. But although, strictly speaking, the whole consideration of \$800 mentioned in the conveyance, had not been paid in cash at that time, I cannot bring myself to think that under the circumstances detailed in the answers, the party intended to commit perjury in that affidavit, or that he did not believe that substantially the consideration was paid.

Indeed, it appears to me a circumstance not undeserving of notice, and favorable to the fairness and frankness of the conduct of the defendants, that they have unreservedly stated the actual nature of that transaction. It can scarcely be doubted, that if they had designed a fraud, and to support that fraud by perjury, their answers to the present bill would not have exhibited any, the least difference from the affidavit. If perjury was committed in the affidavit taken before the magistrate, both the defendants were guilty, the one of perjury, and the other of subornation of perjury, and upon that supposition there is, I think, very little doubt the answers to this bill would have been formed in full accordance with the affidavit. Fraud, it has been over and over decided, is not to be presumed but must be proved, but in this case, which involves the charge of perjury as well as fraud, no witness has been produced to sustain it. If the answers speak the truth, the consideration expressed in them was paid by the grantee in the conveyances, and as they must be presumed to speak the truth, being responsive to the bill, unless disproved by that degree of evidence which the rule requires, I do not think there is any