

and improper preference to this favored creditor; and 2d, that the payment, assignment, and delivery was made after Thomas was insolvent, and when Jerome knew of his insolvency, and when the former could have had no reasonable expectation of being able to relieve himself from his liabilities otherwise than by applying for the benefit of the insolvent laws, in other words, that the case comes within the provisions of the Act of 1834, ch. 293, and the preference condemned by that Act.

It is, of course, quite unnecessary to repeat what has been so often said, that a trustee of an insolvent debtor attempting to vacate an assignment as made in violation of the insolvent system, is not required to offer direct evidence of the facts upon which he relies, but he may avail himself of facts and circumstances to establish the intention with which the assignment was made, and if they be sufficiently strong, the assignment will be set aside. Such was the opinion of the Court of Appeals in *Dulany vs. Hoffman*, 4 G. & J., 170, and the proposition is not to be questioned. *Glenn vs. Baker*, 1 Md. Ch. Decisions, 73; *Powles vs. Dilley*, 2 *Ibid.*, 119.

But though the plaintiff, in cases like the present, is not required to produce direct evidence that the insolvent, at the time of the assignment, intended to apply for the benefit of the insolvent laws, but may rely upon facts and circumstances to establish the intent, it is most manifest that the difficulty of making out the intent is materially increased when the insolvent, either by his answer, if he be made a defendant, or by his evidence, if he be examined as a witness, denies such intent, and I am aware of no case where the intent has been established in opposition to such answer or evidence. The motives which may influence a party at the time of doing an act, are generally so exclusively within his own knowledge, that it is extremely difficult to attribute to him one different from that which he avows. Indeed, if the avowal be made under the obligation of an oath, as he cannot be mistaken upon such a subject, the imputation of a contrary intention carries with it the imputation of wilful and deliberate perjury. In *Hickley vs. The Farmers and Merchants' Bank*, 5 G. & J.,