JOHN H. FALCONER,
Trustee in Insolvency of JOHN W. CLARK,
vs.
JOHN W. CLARK AND DAVID GRIFFITH.

JULY TERM, 1852.

[INSOLVENT LAWS—FRAUDULENT CONVEYANCES—EVIDENCE—PRACTICE.]

To avoid a deed under the Insolvent Acts of 1812, ch. 77, and 1816, ch. 221, it is not enough that the grantee was insolvent at the date of its execution and that the grantee knew of such insolvency; but it is indispensable that the undue preference should be given "with a view, or under an expectation at the time, of taking the benefit of the insolvent laws."

Where a bill attacks a conveyance as fraudulent under these acts, it should contain an averment that the undue preference was made with such view and expectation.

The 1st sec. of the Act of 1834, ch. 293, is local in its operation and confined to the City and County of Baltimore, and its proviso prevents its application to cases where the grantee had not notice of the insolvent condition of the grantor.

The notice required by this act to vitiate the conveyance is not a technical or constructive notice, but an actual notice derived from a knowledge of the condition of the grantor: and the plaintiff, where the answer denies it, must prove such actual notice at the date of the deed.

The 2d sec. of the Act of 1845, ch. 139, condemns transfers though made at the request or on the demand of the creditor; but allows them to stand, unless made with a view and under an expectation of taking the benefit of the insolvent laws, as required by the Acts of 1812 and 1816: and where this intent is denied by the answer, the plaintiff must prove it.

The grantor in the deed was indebted to a partnership firm, which was indebted to G., one of the partners. G. purchased the property conveyed by the deed, and it was agreed that the purchase-money should be charged on the books of the firm to G. and credited to the grantor, which was done. HELD—

That K., another partner of the firm, was a competent witness for G. in a suit by which the validity of the deed was attacked by the creditors of the grantor.

A vendor selling in good faith, is not responsible for the goodness of his title beyond the extent of the covenants in his deed.

[The deed attacked by the proceedings in this case, was executed on the 6th of September, 1850, and the grantor, Clark, applied for the benefit of the insolvent laws on the 11th