

whether looking alone to the provisions of those acts, it would be competent to the party successfully to assail this deed whatever might be the state of the proof, if exceptions had been filed to the averments of the bill. It is not enough under these laws that the grantor was insolvent at the date of the execution of the deed, 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."

The bill in this case then not being framed to vacate the deed under the Acts of 1812 and 1816, but with a view rather to the 1st section of the Act of 1834, ch. 293, it becomes necessary to inquire whether the complainant has proved a case which entitles him to relief under the provisions of that Act? The Act declares "that when a deed, &c., is made with intent to prefer any creditor, &c., of the grantor, when such grantor shall have had no reasonable expectation of being exempted from liability, or execution, for or on account of his debts, without applying for the benefit of the insolvent laws, it shall be deemed to have been made with a view or under an expectation on the part of the grantor of being or becoming an insolvent debtor, and with intent thereby to give an undue and improper preference." But the proviso to this section, which has been adjudged to be local in its operation and confined to the city and county of Baltimore, *Cole vs. Albers and Runge*, 1 *Gill*, 412, declares that it shall not apply as against any person or persons claiming under the deed, &c., nor to any case where the creditor, or security taking the deed, shall appear not to have had notice of the condition of insolvency, as aforesaid, of the grantor. And it has been also adjudged, in the case referred to, "that by the true construction of the Act, the notice which is to vitiate the deed, is not a technical or constructive notice, but an actual notice derived from a knowledge of the condition of the grantor."

Assuming then that the plaintiff's title to the aid of the Court depends upon the 1st section of the Act of 1834, it is incumbent on him to prove that the defendant Griffith had