not successfully be done by any evidence in this cause,
The Complainant Benjamin C himself admits an indebtedness of $7.300.00 the part of Benjamin C John at the time of the execution of the deed which indebtedness constituted the consideration as mentioned in the deed,
The answer of the defendants responsive to the interrogatory as it is set forth (as exhibit) a receipt signed by Benjamin prior to the execution of the deed calling for the the various claims specified by John C as the creditors of Benjamin amounting in the aggregate to more than the consideration of the deed,
The testimony in the cause estimates the value of the property conveyed by this deed at about eleven thousand dollars so that the sum of paid C Klein in connexion with the sale, which appears as evidence that Mrs Cushing wife of Benjamin did not join in said deed, but released her contingent right of dower which she had into the legal right in 1848 when his husband died when she became possessed of for the third thereof, she has remained in possession of the same to the present time she being now alive and occupying the same. From these facts it is clear to my mind that John Cushing the purchaser paid a fair and fair consideration for the property conveyed and stands before this Court as a fair and bona fide purchaser and grantee at Common Law under the Statute of Elizabeth Fraser vs Treasurer 4 Md 334 If the deed is void then it must be by reason of a fraud perpetrated by Benjamin in violation of our State insolvent laws. The Allegation in the bill is that the deed was made by Benjamin with a view to give an undue and unproper preference to John Cushing the grantee of the same In determining this question the evidence to sustain the allegation together with an insolvent law Spencer's 1826 must be carefully examined and perused as it appears from the Record that this application took place in December 1826 some forty years since. Before however I proceed to an examination of the case it will be proper here to notice and decide upon the objection taken by the defendants to so much of the record of insolvency filed in this cause as calls to mind the bread and verdict of guilty rendered vs Benjamin C and upon the allegations tried at March Court 1827, evidence against them, The proceedings connected with that bread and verdict and objects to as evidence against them upon the ground that they the party under them they claim were strangers to that suit not parties to the record in that case and therefore the verdict and judgment in the same is res inter alios acta as to them and those whom they represent

After full and careful examination of all the authorities cited in argument upon this point and after the most diligent research on my own part to this question I cannot discover upon what principle this portion of the record in insolvency can be made evidence against these defendants and that the objection to the same be well taken and must be sustained 1st Starkie on Evidence 176 page 184 this principle is clearly laid down that no one might be bound as a matter of private right by a judgment or verdict to which he was not a party where he could make no defence also he could not appeal Nor should any one injustice be bound by a verdict although he was privy to it but where his adversary was not also a party. Another principle is laid down by same author and same page which also has its application to this case viz that a person who could receive no benefit from a verdict had it been given the contrary would not be allowed any benefit from it where it turns out to be in his favor because such judgment operates by way of estoppel and estoppels must be pleaded immediately. Now as they these principles so clearly

and so lucidly laid down by one of the highest of our Courts being highest authority upon evidence to this Court and verdict being to be entered against these defendants they were not parties to it and John Cushing whom they represent was no party named here and no opportunity could have cross examined no Witnesses he could have had sworn no appeal The adversary of the parties was no party to that suit and had the verdict in that case been contrary and the allegations not sustained the trust in this case would not have been fraudulent and could have set aside by this Court to vacate said deed, Again in Hanlon vs Mallon 4th Gill page 122 our Court of Appeals lays down this principle in these emphatic words – that decrees and judgments of Courts of law and Equity are only binding the parties to the proceedings in which they are pronounced and those claiming under them and as against all other persons they are res inter alios acta and not binding upon nor admissible in evidence against them as adjudications of their rights. The principle above laid down are admitted by the Solicitors for the Complainant but they seek to get rid of them by bringing the case at bar under an exception viz that because John Cushing had notice of this trust therefore he must be bound by this verdict and the following authorities were cited in support of that position Penn vs Ward 2 Cr 300 Hartelle Ex parte Selby vs Freeman 4 Cr 344. I but admitting for the sake of the argument that John Cushing had notice of this trust and was present at the same as all the witness of which there is no legal evidence still I cannot see in what respect this circumstance have any application to the present case. In the case of C Cr 300 Ranahans property was attached under a Foreign attachment he had notice of the fact and the Court by having notice could have opposed to the motion made by him as a party to the suit pleaded to property in himself and opposed if necessary this is the subsistence of that decision But John Cushing under whom these defendants claim could not by any possible means have made himself a party to the suit, in which the allegations as Benjamin were true he could have made no defence he could have cross examined no Witnesses he could have produced not so with Ranahan he could have appeared and had his rights protected. In the case of the Charitable Hall School 4 Cr 414 Grenwell an administrator was sued for money in his hands as due to the plaintiff by reason of a special law. All Witness to that suit claims the money in the administrators hands as due to others as distributees of his intestate The Court decided that the administrator being a trustee for Witness assignment by him could be an absolute bar to any suit instituted by Witness to recover her distributive share and the principles that recovery against a trustee without fraud but also in bona fide in resisting claims against him was unconscionable to this extent give trust thought not a party to the suit In this case Benj Cushing stands in no such relation to John Cushing he in no sense of the term can be said to represent John in the trust of the allegations against him and no judgment against him could be binding on John

Without this evidence their is but little proof in the cause to support or maintain this allegation The answers of the defendants the representatives of John Cushing do not admit that the deed was executed by Benjamin with a view to give an undue and unproper preference and a without view and expectation of taking the benefit of the insolvent laws which demand puts the Complainant on proof to sustain the charge as best he can Hagner vs Gelleng 3 Cr 140

The evidence in the cause relied upon to vacate this deed independent of the recital in the allegation is the fact that Benjamin Cushing stripped himself of nearly all his property by executing this deed to John together with other