sales of his property to certain of his creditors only some few weeks before his application. This circumstance together with the fact that Benjamin was permitted to occupy the home farm apart of the land conveyed to the day of his death, is the principal evidence before me upon which I am called upon to set aside this deed as fraudulent. The act of 1842 Ch 77 of the laws applicable to this case declares that all deeds or conveyances of real personal or mixed property to any creditor by any person with a view or under an expectation of being or becoming an insolvent debtor and with intent thereby to give an unduly and improper preference to such creditor shall be absolutely null and void and the title to such property shall rest in the trustee of such insolvent debtor, as effectually as any property specified in the schedule of such insolvent. This act on more than one occasion has received a judicial construction from the highest tribunal of our state. In Kinney vs Boggs 5 Hoz 403 the Court say to render a deed of this description void under the insolvent laws there must be a bona fide intent on the part of the grantor — an intent to apply and an intent to prefer. Davis vs Beaty. 9 Gill 342 Fowler vs Lacey 9 Md 222 same principle announced again in Falconer vs Griffith 3 Md ch 155 Hockley vs Turner 7 Md 1 Bank 5 Gill 377 and Cranford vs Taylor 6 Gill 332 the Court say it is not enough that the grantor was insolvent at the date of the deed and that the grantee knew of such insolvency, but it is indispensable that the undue preference should be given to with a view and under an expectation at the time of taking the benefit of the insolvent laws. In Coles vs Bringer 1 Gill 413 the Court in the strongest language say the grantor at the time of executing the deed must have contemplated taking the benefit of the insolvent laws, otherwise the deed cannot be condemned. In Cranford vs Taylor 6 Gill 332 and Coles vs Bringer 1 Gill 412 the Court further say though a transfer is made to a favored creditor with a view and expectation of taking the benefit of the insolvent laws, it will not be avoided, if made upon the application or request of the creditor such cases not being within the meaning of our insolvent laws. With these principles settled as to the law and as applied by our highest Court to the evidence before me in the examination of the above cited cases I know proper to apply them to the testimony in this case as it appears in the record. And when is the testimony to prove that Benjamin Cushing at the time he executed the deed sought to be vacated not only intended to prefer John Cushing a creditor, but also contemplated at the time of executing the same to apply for the benefit. The fact that Benjamin applied in less than four weeks after the execution is a circumstance to be taken but mere proximity of time standing alone without supporting circumstances tending to prove the illegal intents is not sufficient. Malcolm vs Hall 9th Gill 180 In McClelland vs Hopkins 17th Md 395 the Court of appeals refused to set aside a deed as fraudulent executed six months before the application.

The circumstance that Benjamin then at the time he executed the deed that he was insolvent and had no reasonable expectation of being exempt from execution except by applying for the benefit can have no weight as this deed was executed in 1826 and not until the act of 1834 Ch 292 was the important change made in our insolvent system substituting the reasonable expectation of such as alternative for the direct purpose and invalidating the transfer whether made upon request or not. Neither is there any force in the circumstance that Benjamin stripped himself of all his property preferring some creditors which are unpreferred and assuming himself at least preference enough and



allowed and every man apart from the provisions of the insolvent laws has right to prefer a creditor to another even to the absorption of his whole estate and the very fact of giving preference presupposes that there are some creditors unpreferred for against whom the debtor is apprehensive and furnishes the strongest motive to the creditors for obtaining payment in property or otherwise. Glenn vs Grove 3 Md 227. The circumstance that Benjamin remained in possession of a part of the property to the time of his death is explained by the answer of defendants in response to a special interrogatory saying that John took possession and rented out of the houses in the part occupied by Benjamin up to the time of his death and that Benjamin held the same in subordination to the title of John and as tenant and a book produced with the hand writing of John as an exhibit which defendants pray may be regarded as part of the same which I regard as legitimate evidence in response to an interrogatory though excepted to showing an account for a number of years in regard to the rent received from Benjamin. The grantor though insolvent remaining in possession of property conveyed as a renter or tenant not evidence of fraud. Glenn vs McCleaster 3 Md 225 In Cranford vs Taylor 6 Gill 329 and Falconer vs Griffith 3 Md ch 155 the Court say if a transfer is made to a favored creditor with a view or expectation of taking the benefit of the insolvent laws, the deed will not be avoided if made at the request or application of the creditor. In this case there is certainly not a particle of testimony to prove that this deed was voluntarily made by Benjamin but there is an important circumstance in proof from which may be inferred the fact that the sale was made at the request and stipulation of John the grantee. The defendants in their answer in response to the interrogatory requiring them to set forth so far as in their power the amount of debts owing from Benjamin to John at the date of the deed refer as part of their answer a Mortgage executed by Benjamin to John nearly six months before the execution of the deed setting forth the very claim and amount which appears was paid by John as recorded by Benjamin a few days before the deed and as alluded to in the former part of this opinion. This Mortgage though properly executed appears from the evidence was never accepted by John so as to make it valuable against the creditors of Benjamin as he claimed before the deed record the only way by which he could derive any benefit from its provisions against the creditors of the Mortgagor. This to me is a strong circumstance to show that John was demanding payment of his claims months before the deed was executed and though a Mortgage was given him yet it could not be satisfied except by absolute payment and bona fide sale of some property by this debtor that was equivalent to his debt. And here I may remark that the argument to prove the intent by reason of the short time that elapsed between the deed and the application is proven to be of no weight by this Mortgage for if Benjamin intended to apply for the benefit when he executed this deed being five weeks before his application he must have intended to do the same thing six months before when he executed this Mortgage which was an effort to secure and prefer the same indebtedness as constituted the consideration of the deed. The case of Shulenger vs Hoffman 7 Gill 172 has been pressed in argument by the Solicitor for Complt as controlling this case and I cannot but admit that there are facts in that case similar in some respects to the one now under review but there were several very important facts in evidence in that case that does not appear in the present which of themselves would have avoided the deed there impeached. In the case of Shulenger vs Hoffman the answer of the assignors and assignee were both before the Court, the assignors denying in their answers but that they made the assignment with a view and under the