expectation of taking the benefit of the assignee and were positively the goods were sent to him voluntarily on the part of the insolvent unbeknown to his part and in Seventeen days thereafter Stewchemb and Small his assignors applied for the benefit of the insolvent laws. In the present case there is no proof whatever that the deed was voluntary made but on the contrary there is a strong circumstance to show that the deed was made at the request and solicitation of John Cushing the creditor in the case relied upon the proof was full and positive that the assignment was voluntary on the part of the assignor unbeknown on the part of the assignee In the present case neither of the original parties are before the Court, both have been in their graves for nearly twenty years and I am thus deprived of their answers under oath, which is so essential where the motives and intent of parties are to be ascertained and enquired into In the above cited the Court had the implied admission of the grantor in his answer that the assignment was made upon with a view and expectation of applying for the benefit so that after comparing the two cases there appears in the above cited case two facts in evidence either of which was sufficient to vacate the deed, and neither of which appear in the present Now in this case after a full and careful examination of all the said evidence and the law as applicable to the same my mind is not satisfied of the fraudulent intent on the part of Benjamin to apply for the benefit of the insolvent laws at the time he executed this deed and that the second was made voluntary on his part. There are circumstances in the case, be it true that were the appearance of suspicion but they do not convey to my mind that degree of conclusiveness which should induce me as a Court of Equity to vacate and annul this deed and thus take from the defendants the representatives of a bona fide purchaser property for which their ancestor paid a full and valuable consideration

The presumptions of law are all in favor of the deed The fraudulent intent must be shown and it is a thing to be presumed but must be proved and that by evidence sufficient for that purpose which in my opinion has not been done in this case.

There is another defence relied upon by the defendants in this case limitations and lapse of time the former specially relied upon in the answer and the latter insisted upon at the final hearing This defence concerning the deed to have been void I think presents an insuperable objection to the prosecution of the issue Two objections however arranged to this defence, First that by lapse of time cannot be urged at the final hearing unless relied upon in the answer or by way of plea or demurrer and numerous authorities have been cited in this respect to show the practice in other States, and the English Courts, but in the absence of any Maryland authority to the contrary and supported by the opinions of Chancellor Johnson in Hall vs McLean and 2 Md Ch 135 and Chancellor Bland in Hopkins Case 3 Bland 110 that lapse of time is a defence which has always been allowed to be made at the hearing in a matter of substance governing out of the above case I am of the opinion that this objection is of no avail In addition I can see no good reason why this defence may not be relied upon in a Court of Equity where it is urged and sustained daily in our Courts of law, without being specially pleaded as in all cases where twenty years adverse possession of real estate or beyond the period limited for the recovery of legal estates.

The second objection to this defence is that the property conveyed by this deed was been held by John Cushing under a direct trust as the insolvent trustee of Benjamin and therefore lapse of time cannot be pleaded in such a case,

as a general principle, no time will lie against a direct or express trust, as between trustee and cestui que trust This is a rule of law laid down by all the authorities but concerning which I do not admit, that the property vested in John Cushing as the insolvent trustee by operation of law arising from the receipt of money on the allegations tried against Benjamin yet is this such a trust that limitation or lapse of time will not apply.

Chancellor Kent in the cases of Nand vs Bloodgood 7 Johns Ch 124 after a full and thorough investigation of all the authorities upon this particular point lays down what I conceive to be the true rule viz that trusts to which limitation or lapse of time do not apply in that class of trusts for which there is no remedy but in a Court of equity or in other words trusts which are the mere creatures of a Court of Equity and not within the cognizance of a Court of law. Such is not the case of our insolvent trusts they are admissible exclusively in Courts of law on the principle of Equity In the case of Sherman vs Glenn & Wife 2 G & J Judge Buck speaking of our insolvent trusts says "although these trusts are peculiarly the subject of equity jurisdiction this particular class of trusts have been confided to Courts of common law, in regard to which in the exercise of a special authority they proceed upon the principles of equity without being Courts of Equity.

The reason of the rule that limitation or lapse of time do not bar or apply to direct and express trusts being based upon the principle that limitations only bar legal remedies can have no application to our insolvent trusts because the creditors of the insolvent who are and the cestui que trusts legal remedy and can come into the Courts of law at any time and require the insolvent trustee to complete his trust or file a petition for the appointment of a new trustee to administer and close the same. In Green vs Johnson 3 G & J 391 which was a case of direct trust and limitations pleaded Judge Dorsey in his opinion decided that as soon as an action at law can be maintained or instituted by the cestui que trust that moment the act of limitation commences. I see the above views are cited on the theory that John Cushing held this property as trustee which the law and the facts in this case in my opinion do not sustain. A schedule of the insolvents property was here appears in the Record as the law requires, it having been lost But the fact is apparent that the deed of Benjamin the insolvent did not convey to his trustee John the property embraced in the deed sought to be vacated upon the allegation that the same was fraudulently conveyed to John would not have been held The further fact appears in the Record that the bond of the trustee is only in the penalty of $5000 there can be no doubt had this property been delivered in the insolvent deed the penalty would have been a mere as of $20,000 This property therefore never rested in the trustee by from the insolvent as such as appears from the facts in the case Nor in my opinion did it rest in the insolvent trustee by virtue of law John Cushing was only a professional trustee so declared by the insolvent record Prior to the act of 1825 Ch 203 there was no law appointing professional trustees for insolvent in the several Counties of the State by this act Sec Six Creditors of insolvent may file allegations and the judgment in such case as provided by the act is that the creditors proceeding the allegations shall have a judgment of his costs for his costs and the insolvent debtor shall be debarred from any benefit of the insolvent laws of this State; there is not a single word in the act that vests the property in the professional trustee in the event of the creditors succeeding in sustaining his allegations but punishes the insolvent by debarring him of taking the benefit of the laws which was done in this case. In this view I am sustained by the very proceedings in this case, which is a bill filed by a permanent