

HENRY P. BROOKS, PERMANENT TRUSTEE
 OF HENRY P. THOMAS,
 VS.
 HENRY P. THOMAS AND JOHN H. T. JEROME. } DECEMBER TERM, 1852.

[INSOLVENT LAWS—EFFECT OF ANSWER.]

WHERE the trustee attempts to vacate an assignment of the insolvent, as in violation of the insolvent system, he is not required to offer direct evidence of the facts upon which he relies, but may avail himself of circumstances to establish the intent with which the assignment was made, and if they be sufficiently strong, it will be set aside.

But where the answer or evidence of the insolvent denies such intent, the difficulty of making it out is materially increased, and nothing short of circumstances of the strongest description will justify the Court in disregarding such answer or evidence.

There must be both the intent to prefer, and to take the benefit of the insolvent laws, or the transfer will not be disturbed.

To avoid a transfer or payment, under the 1st section of the Act of 1834, ch. 293, *actual notice* must be brought home to the preferred creditor of the insolvency of the debtor; mere technical or constructive notice is not sufficient.

[The facts of this case are stated in the opinion.]

THE CHANCELLOR:

By the bill in this case, which was filed on the 15th of October, 1850, it appears that the defendant, Thomas, petitioned for the benefit of the insolvent laws on the 5th of February, 1849, and that the complainant was appointed and qualified by giving bond as his permanent trustee in September, 1850.

The proceedings show that Thomas, the insolvent, and one Spotswood Childress, commenced business as grocers in the city of Baltimore in September, 1847, and continued to carry it on until March, 1848, when they dissolved, and Childress retired, and took with him the capital which he put in, about \$600, and his share of a small estimated amount of profit. No capital was furnished by Thomas, but he brought