

as used in this section means an inability to pay debts as they become due in ordinary course of business. Intention of this section; when a party subjects himself to its provisions. *Castleberg v. Wheeler*, 68 Md. 275.

An attempt to set aside a conveyance as fraudulent and made in contemplation of insolvency, denied. What must be established to avoid such a conveyance? Lapse of time between the conveyance and the application in insolvency. *Powles v. Dilley*, 9 Gill, 231; *Beatty v. Davis*, 9 Gill, 218; *Malcolm v. Hall*, 9 Gill, 180; *Powles v. Dilley*, 2 Md. Ch. 123; *Glenn v. Baker*, 1 Md. Ch. 76. And see *Brooks v. Thomas*, 8 Md. 371; *Dulaney v. Hoffman*, 7 G. & J. 175; *Hickley v. Farmers' Bank*, 5 G. & J. 380.

It is immaterial whether the preferences appear upon face of a written instrument, or are created by payments, transfers or otherwise, they are all void. When they are made the basis of an adjudication, the latter *ipso facto* strikes them down. *Vogler v. Rosenthal*, 85 Md. 45. See also *Applegarth v. Wagner*, 86 Md. 475.

A judgment to the effect that a party is not entitled to a discharge because of having made a deed to B. which was a preference, is not an adjudication *in rem* and conclusive upon rights of B. The status of property is not involved in such verdict and it is not evidence against B. After the lapse of twenty years an insolvent estate is presumed to be closed, and equity will not entertain a bill to set aside conveyances made by insolvent before his application unless it is satisfied that there are subsisting debts due by the insolvent. Both intent to take the benefit of insolvency and to give an unlawful preference, must appear to bring an act under this section. Proximity of time as an element in determining such intent. *Syester v. Brewer*, 27 Md. 313. See also *Maennel v. Murdock*, 13 Md. 177; *Powles v. Dilley*, 9 Gill, 222.

Whatever is the necessary consequence of an act deliberately done, the law presumes every man to intend. When the *quo animo* becomes an inference of law. *Gardner v. Lewis*, 7 Gill, 404.

Fact that a debtor at time he executed a conveyance could not apply for benefit of insolvent laws, is a strong circumstance to prove that it was not executed in contemplation of insolvency. *Glenn v. Baker*, 1 Md. Ch. 76.

The reservation in a deed for the benefit of creditors of a fee for the draftsman of the deed is a preference. *Wolfsheimer v. Rivinus*, 64 Md. 235.

For conveyances, etc., held to be preferences and void, see *Clark Co. v. Colton*, 91 Md. 207; *Applegarth v. Wagner*, 86 Md. 475; *Whedbee v. Stewart*, 40 Md. 421.

For conveyances held to be *bona fide*, and hence within proviso contained in last clause of this section, see *Nicholson v. Schmucker*, 81 Md. 464; *Hinkleman v. Fey*, 79 Md. 114.

Generally.

Where a conveyance or payment is void, the title to the property vests in the insolvent trustee. Prayers correctly setting forth the facts requisite to bring a case under this section. *Willison v. Frostburg Bank*, 80 Md. 210.

Where a debtor has been adjudged insolvent on other grounds, or where the proceedings are voluntary, the trustee must proceed in other forums to have transfers, assignment, etc., set aside. This was connection in which language quoted in *Paul v. Locust Point Co.*, 70 Md. 292, from *Purviance v. Glenn*, 8 Md. 206, was used. *Vogler v. Rosenthal*, 85 Md. 46.

A conveyance made void by this section may be so declared and treated by insolvent court, although such conveyance was made to a non-resident and grantee was not summoned and did not participate in insolvency proceedings. The adjudication based upon conveyance of necessity involves the determination that conveyance is void. *Brown v. Smart*, 69 Md. 329 (affirmed in 145 U. S. 457); *Vogler v. Rosenthal*, 85 Md. 45.

While a mortgage may be void as a preference, note to secure which mortgage was given, may be valid. *Frederick, etc., Co. v. Michael*, 81 Md. 487.

What a bill to set aside deeds as in fraud of our insolvent system must allege. *Faringer v. Ramsay*, 4 Md. Ch. 38.

For cases where purchasers were held not to have acted *bona fide*, see *Smith v. Pattison*, 84 Md. 345.

For a note upon fraudulent conveyances, see *Swan v. Dent*, 2 Md. Ch. 111.

For cases apparently now inapplicable to this section because of changes in the law, see *Whedbee v. Stewart*, 40 Md. 421; *Mackintosh v. Corner*, 33 Md. 605; *Zeigler v. King*, 9 Md. 330.

Cited but not construed in *Third Natl. Bank v. Lanahan*, 66 Md. 469.

See secs. 8 and 22 and notes.

As to conveyances from husband to wife, see art. 45, secs. 1 and 2.