

Case No. 9,011.

MANDEVILLE v. JAMESSON.

{1 Cranch, C. C. 509.}¹

Circuit Court, District of Columbia.

July Term, 1808.

INSOLVENCY—BENEFIT OF ACT—PETITION OF CREDITOR.

Upon the petition of a creditor of an insolvent debtor to deprive him of the benefit of the insolvent act [2 Stat. 239], the defendant may show that the petitioner is not his creditor.

This was a petition to deprive the defendant of the benefit of the insolvent law, filed under the seventh section, upon an allegation that the defendant had given a preference to one of his creditors in a deed to La Mar, in trust to pay a debt due Margaret Jamesson in Ireland.

Mr. Jones, for defendant Upon the insolvency of the defendant, this property was all given up to his trustee. If the deed be void, there was no preference given. An abortive attempt to give a preference is not within the meaning of the law. The words are. “assigned or conveyed any part of his property to give a preference to any creditor or creditors;” “or of having given any preference as aforesaid.” 2 Stat 239. There must be a disposition, or lessening of his property. A conveyance means a legal and valid conveyance, whereby the property passes.

CRANCH, Chief Judge, suggested a doubt whether the defendant should be permitted to go into proof that the petitioner is not a creditor, supposing it to be a matter to be decided ex parte at the time of the insolvent’s application, and that prima facie evidence is sufficient.

THE COURT, however, (DUCKETT, Circuit Judge, absent,) went into an examination of the evidence, and was of opinion that the petitioner was a creditor, and that the deed was made with intent to give a preference.

But THE COURT, by the consent of the parties, continued the cause to the next term.

¹ [Reported by Hon. William Cranch, Chief Judge.]