late Samuel Chase held an estate in fee simple, of which this plaintiff is dowable.

But the bond of the 26th of February, 1806, it is said, shows that the previous contract, of the 4th of the same month, according to the true intention of the parties, is only to be regarded as a mortgage; that it is not, as it purports to be upon its face, an absolute sale; but a mere security for the loan of money from the late Samuel Chase to James Bryden. It is true, the Court should, in cases of this nature, look into the various contemporaneous agreements and dealings between the parties to ascertain what was their design, and the real nature of their contract. *Sevier* v. *Greenway*, 19 *Ves.* 412.

This case is, however, susceptible of being still further simplified and reduced. Let it be supposed, that Bryden had obtained the entire estate in fee simple from Gough, Grant and Clarke; and being so seized, that he alone was the grantor by the deed of the 4th of February. Then, let this bond, of the 26th of February, be considered together with or even as a part of that deed. The whole will read as an absolute sale, with nothing more than a condition for a re-purchase.

That this whole transaction, from whatever point of view it may be contemplated, can only be considered as an absolute sale, with a condition or covenant for a re-purchase, is manifest; because, it wants all the usual badges and characteristics of a mortgage. The money paid was, so far as appears, a fair price for the absolute purchase of such property; liable to much injury, requiring frequent repairs, and of fluctuating fashion and profits. Although Chase was not put into actual possession, yet Bryden leased from him, and held as his tenant. Chase received the rents and profits for his own use and benefit, and gave no account of them whatever. * The chief value of this lot of land within the City **226** of Baltimore, consisted in there being a large edifice erected upon it, which was occupied and used as a tavern: the loss of which, if destroyed by fire or otherwise must have been borne by Chase; as it was held at his risk entirely. *Co. Litt.* 205, *N.* 1; *Pow. Mort.* 125, *note P., and* 138, *note T.* There was nothing of that reciprocity so essentially necessary to constitute a mortgage. It is as essential that the one party should have it in his power, at some specified time, to compel the re-payment of the money, or to foreclose, as that the other should have it in his power to redeem. But, although Bryden might re-purchase for a stipulated sum at any time, during the sixteenth year after the date of the contract, yet Chase could not compel Bryden to pay any sum of money, at any time; Chase took no bond, or other collateral security from Bryden; nor is there any clause in any deed or conveyance, by which Bryden covenants or promises to pay Chase any sum of money. If the edifices had been destroyed, or the property had