

a new acceptance was given by said Whittington & Snyder, of a draft of John W. Fowler in favor of Clark, and by him endorsed to the firm of B. Deford & Co. Whittington & Snyder afterwards failed in business ; and Frederick A. Levering and John C. Bridges having become their assignees, claimed to hold the schooner exclusively for the benefit of the general creditors of their insolvents, and advertised it for sale. The complainant filed his bill against them for an injunction, and prayed that the vessel might be sold under the direction of the court ; and the proceeds, after payment of the purchase money, assigned to him. A sale was subsequently made by agreement, and the case referred to the Auditor, who applied the proceeds, (after deducting the costs) *proportionally*, to the payment of the unsatisfied draft held by Applegarth ; of the one held by Deford & Co. ; and of the claim of the defendants on account of the payments made by their insolvents, (the proceeds being insufficient to pay them all in full,) Applegarth, and Deford & Webb, excepted to this account, because their claims were not allowed in full, instead of being placed on an equality with those of the defendants. Proof was offered at the same time to show that the draft held by Deford & Webb, constituted one of the claims against the schooner Emily Ann. The Auditor having stated another account dated 3d December, 1847, under the instructions of the complainant's solicitor, allowing said claims in full, the case came before the Chancellor, on the question of its ratification.]

---

THE CHANCELLOR :

There can be no doubt, that the bill of sale, though absolute in its terms, is in this court to be considered as a mortgage ; the object being to secure the payment of a debt, and not to transfer the title absolutely to the parties to whom the conveyance was made. *Hicks vs. Hicks*, 5 G. & J., 75 ; *Dougherty vs. McColgan*, 6 *ibid.*, 275.

And it seems to me there can be as little doubt, that the debt intended to be secured, was that due the vendor of the vessel, and for which the bills were given ; and that the holders