seem to be any necessity for giving any directions with respect to this portion of his estate. I will, however, say, that it appears to me very clear, that the daughter of the testator took an absolute title in remainder in one-seventh of this rest and residue, upon the death of the widow, to whom a life-estate was given; and that, upon the death of the widow, this one-seventh will descend to the heirs at law of the daughter without being liable to the curtesy of her husband in the realty, she not having been seized in fact, and in deed, of this estate during the coverture. 4 *Kent's Com.*, 29, 30. The outstanding life-estate in the widow of the testator, during the coverture, debars the husband of his curtesy.

[No appeal was taken in this case.]

THE BANK OF WESTMINSTER
vs.
WILLIAM PINKNEY WHYTE, PERMANENT TRUSTEE OF GEORGE SUTER.

WM. P. WHYTE, PERMANENT TRUSTEE OF GEORGE SUTER
vs.
JOHN FISHER ET AL.

March Term, 1850.

[ABSOLUTE CONVEYANCE A MORTGAGE—RIGHT OF INSOLVENT TRUSTEE TO SELL MORTGAGED PROPERTY.]

No matter how absolute a conveyance may be on its face, if the intention is to take a security for a subsisting debt, or for money lent, the transaction will be regarded as a mortgage, and will be treated as such.

Parol evidence is admissible to show, that an absolute conveyance was intended as a mortgage, and that the defeasance was omitted or destroyed, by fraud or mistake.

But, unless accident, fraud, or mistake can be shown, or in cases of trusts, parol evidence cannot, either at law or in equity, be admitted to contradict, add to, or vary the terms of a will, deed, or other instrument.

It is the right and duty of the trustee, in insolvency, to sell the mortgaged property of his insolvent, and pay off the liens and incumbrances thereon.