

Though the transfer made to secure a debt, is in the nature of a trust, still it is the duty, and the right of the trustee, in insolvency, to dispose of the property.

[On the 20th day of November, 1845, George Suter, of the city of Baltimore, being indebted to the Westminster Bank in the sum of six thousand dollars, agreed with that institution, through its cashier and agent, John Fisher, that, in consideration of the advance of three thousand dollars, in addition to the sum already due by him, he, the said Suter, would confess judgment for the whole sum of nine thousand dollars, and also by way of security for the repayment of the said loan of three thousand dollars, would assign and transfer to the said bank, three butcher stalls, held by him in different markets in the city of Baltimore. The advance was made by the bank, and the judgment confessed, and stalls assigned by Suter.

On the thirteenth day of March, 1846, Suter applied for, and obtained the benefit of the insolvent laws, and William Pinkney Whyte was appointed his permanent trustee.

The trustee, under the insolvent laws, considering the transfer of the said stalls by Suter as only a security for the payment of the loan of three thousand dollars, and claiming the disposition of said property in his capacity of permanent trustee, advertised the same for public sale in the city of Baltimore, to take place on the twentieth of July following.

Before the day appointed for the sale, a bill was filed by the Westminster Bank, claiming the conveyance made by Suter as absolute, and the surplus, if any, after the payment of the three thousand dollar loan, of the money arising from their sale, as applicable to the part payment of the prior debt of six thousand dollars, and praying a writ of injunction against the trustee, prohibiting such sale. An injunction was accordingly issued on the fourteenth of July.

An answer was filed on the 30th of July, 1847, by the permanent trustee, denying the title of said bank to said stalls, except by way of mortgage security, and praying a dissolution of the injunction.

A bill was also filed on the 10th of May, 1847, by Whyte,