

the permanent trustee, to set aside the transfer as fraudulent in view of the insolvent laws; and the answer of the defendant, Fisher, was filed on the 29th of June following.

In October, 1848, a sale was made of said stalls by John Fisher, cashier of the said bank, to one David C. Steiner, and an order to the market master for the delivery of one of the said stalls given to said Steiner.

On the 21st of October, 1848, upon a bill filed by the trustee, Whyte, for that purpose, an order was passed granting an injunction against the said Fisher and Steiner, and the market master, commanding them to refrain from interfering in any way with said property, until the further order of the court.

Upon the motion to dissolve the injunction granted upon the bill of the Bank of Westminster, the Chancellor said :]

THE CHANCELLOR :

These cases have been argued together, and are so connected, as in the view of the counsel and the court, to constitute but one suit.

The pecuniary interest involved is inconsiderable, but the questions which the case present are not unimportant.

The general rule is too firmly established to be questioned, that 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. *Hicks vs. Hicks*, 5 *Gill & Johns.*, 75; *Dougherty vs. McColgan*, 6 *G. & J.*, 275.

And though the defeasance was by an agreement resting in parol, still, as between the parties, the deed, though absolute on its face, will be considered a mortgage, for 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. 2 *Kent's Com.*, 142, 143; *Henderson vs. Mayhew et al.*, 2 *Gill*, 393.

But it is likewise undeniably true, that 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