The position that this was the intention of the parties, derives powerful support from the fact, that the sum of three thousand dollars, advanced at the time of the transfer, was included in the judgment confessed by Suter. Indeed, I do not understand it to be contended by the counsel of the bank, that these three stalls were purchased by it, for the sum of three thousand dollars, because, if so, no conceivable reason could be assigned, for including that sum in the judgment. His argument is, that the transfer was absolute, and that the bank was to be at liberty to sell and apply the proceeds of the sales to the extinguishment, as far as they would go, of the entire debt of nine thousand dollars, for which the judgment was rendered. If that was the character of the transaction, that is, if the stalls in the hands of the bank, or its agent, were affected with a trust, to sell and apply the proceeds to the payment of the debt, still, I should think, that in the eye of a court of equity, the transfer would be regarded as a mortgage, being a mere security for the debt, and not an indefeasible transfer of the title.

My opinion then, is, that this transfer of these stalls, though absolute in terms, must be treated as a security merely, and be subject to the considerations governing such transactions.

And this conclusion is arrived at without trenching upon the principle, that parol evidence in the absence of fraud, or mistake, is inadmissible to vary or contradict the clear import of a written instrument, but upon the confessions and statements of the answers themselves, which, in my opinion, prove clearly that a security merely was intended to be taken, and if so, it follows, that however absolute the form of the instrument, it will be dealt with as a mortgage.

The remaining question has reference to the right of the insolvent trustee of Suter to sell this property, and administer the proceeds of the sales under the control of the court, by which he was appointed, and this question depends upon the true construction of the 5th and 7th sections of the act of 1805, chap. 110.

It is conceded, and indeed could not be disputed, since the decision of the case of *Alexander* vs. *Ghiselin et al.*, 5 *Gill*,