

138, that if the transfer of this property is to be regarded as a mortgage or pledge for the security of a debt, that it would be the right and the duty of the insolvent trustee to sell it and pay off the liens and incumbrances thereon, the opinion of the Court of Appeals in that case being explicit to that effect. But it is urged, that the transfer here, though made to secure a debt, is in the nature of a trust, and that the insolvent trustee has no authority to interfere with the trustee selected by the convention of the parties, whose right it is to proceed in the discharge of his duty, undisturbed by any such interference.

It appears to me, however, that, assuming the transaction to be such as the counsel of the bank has characterized it—that is, that the property in question, though transferred to Mr. Fisher absolutely, was nevertheless affected with, and to be regarded as subject to, a trust for the payment of the money due from Suter to the bank; and that parol evidence is admissible for the purpose of showing the trust, still it seems clearly to come within the scope of the principles settled by the appellate court in the case referred to.

Looking to the design of the insolvent laws, as expounded in that case, which was to secure a prompt, single and harmonious administration of the estate of the insolvent, which could only be effected by bringing all the parties interested before one and the same tribunal; it would seem to be essential that no one should be permitted to participate with the insolvent trustee in the execution of the trust, by which, as observed by the court in that case, “adverse interests might be created, delays engendered, if not ensured, and probably different, and possibly conflicting, tribunals consulted.”

Considering that this question is, in effect, settled by the case in which these remarks were made, I shall pass orders, dissolving the injunction issued upon the bill of the Bank of Westminster, and continuing that which issued upon the bill of the insolvent trustee.

[No appeal was taken from this order.]