

said trustees, whereby petitioner is left the sole trustee. That Exhibits A and B are evidence of the facts and conditions therein contained, and the petition then prays that the mortgage debt allowed Neale and Lockett, in Account C, may be disallowed and rejected, and for general relief.

The answer of Neale and Lockett denies that the mortgage executed by Mrs. Smith was ever intended or received as a conditional security, but was executed and received as an absolute one, to be made available at the very earliest proper moment, and that the securing any interest in her husband's property to her, was any condition or consideration precedent to her executing the same, and avers that a greater portion of the property mortgaged to them by Smith, belonged to the estate of his father, and that they, having consulted counsel as to the title thereto, surrendered their interest in the same to the administrator *d. b. n.* of said Smith's father; that they then sold that portion which belonged to Smith, from which they realized \$500, with which they credited him, and that there still remains due them a considerable amount over that awarded them by the Auditor's account.

Upon this petition and answer, the Chancellor delivered the following opinion, on the 20th of November, 1851, in which the facts of the case will be found sufficiently stated.]

THE CHANCELLOR:

Assuming that no technical objection exists to granting the prayer of the petition filed by George F. Maddox, trustee of Heloise Smith, on the 25th of February, 1851, the fate of the petition must depend upon the construction of the two deeds of the 27th of January, 1849, exhibited with it. For I entirely agree with the counsel, that these deeds are to be regarded as part and parcel of one and the same transaction, and that the rights of the parties are to be determined upon their legal effect, irrespective of the parol evidence, which being excepted to, must be rejected as inadmissible, there being no allegation or proof that any term or stipulation contained in them, resulted from fraud, accident, or mistake, or that from any one of