

THE BANK OF WESTMINSTER
 vs.
 WILLIAM PINKNEY WHYTE, PERMANENT
 TRUSTEE OF GEORGE SUTER.
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 WILLIAM PINKNEY WHYTE, PERMANENT
 TRUSTEE OF GEORGE SUTER
 vs.
 JOHN FISHER ET AL.

MARCH TERM, 1850.

[ABSOLUTE CONVEYANCE DECLARED A MORTGAGE—INSOLVENT SYSTEM.]

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 treated as such.

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.

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.

But 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 contradict, add to, or vary the terms of a will, deed, or other instrument.

In this case, the answer of the grantee confessing and admitting that a security merely was intended to be taken for a subsisting debt, the conveyance, though absolute on its face, was declared to be a mortgage.

It is the right and duty of the trustee in insolvency to sell the property of the applicant encumbered by mortgages, and pay off the liens and incumbrances thereon.

Where the insolvent has made an absolute transfer of property in the nature of a trust to secure the payment of the money due by him to the grantee, such property must be administered by his trustee in insolvency.

The design of the insolvent laws 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.

[William Pinkney Whyte, as permanent trustee of George Suter, an insolvent debtor, who applied for the benefit of the insolvent laws on the 13th of March, 1846, filed his bill on the 10th of May, 1847, to set aside a certain judgment confessed