agreement and understanding of the parties, at the time it was executed.

The case being removed to this court, was argued by the counsel for the complainant, no counsel appearing on the part of the defendant.]

—

THE CHANCELLOR:

This cause was argued before me during the sittings of the term, by the solicitor of the complainant, and is now submitted under the rule.

The bill, which is filed by the complainant, as the insolvent trustee of one George S. Davis, alleges, that a deed executed by said Davis, on the 25th of September, 1840, and by which the grantor conveyed to the defendant, Banks, certain leasehold estate in the city of Baltimore, absolutely, for the sum of five hundred dollars, was intended as a mortgage merely, to secure the repayment of that sum, the same being at the time regarded by both parties, as a loan. That the claim of the defendant, now set up, to hold the property as his own is fraudulent, and the deed upon which this pretension is founded, was procured with the fraudulent design of so setting it up, in opposition to the express agreement and understanding of the parties, at the time of its execution.

The charge, therefore, in effect is, that this $500, the consideration mentioned in the deed, was advanced by the defendant, to Davis, by way of loan, and that the instrument to secure its repayment, which was intended to be a mortgage, was procured by imposition, and is now used for a fraudulent purpose.

The answer denies the fraud; and the necessity of proving it, by evidence direct, or circumstantial, is, of course, manifest. That fraud may be inferred from facts and circumstances, from the character of the contract, or from the condition and circumstances of the parties, is well established. *Watkins* vs. *Stockett*, 6 *Har. & Johns.*, 435; *Brogden* vs. *Walker*, 2 *Har. & Johns.*, 285. And there can be no doubt, that upon proper averments and upon sufficient evidence, this court may treat an absolute