

the repayment of the sum, the same being at that 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 the \$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, and has been conceded. That fraud may be inferred from facts and circumstances, from the character of the contract or from the condition and the circumstances of the parties, is well established. *Watkins vs. Stockett*, 6 H. & J., 435; *Brogden vs. Walker*, 2 H. & J., 285. And there can be no doubt that upon proper averments and upon sufficient evidence this Court may treat an absolute deed as a mortgage, and decree a redemption of the property by the mortgagor, or a sale for the purpose of paying the sum due. The case of *Brogden vs. Walker*, is a decision upon this point, such a decree having been passed in that case by the Chancellor, and affirmed upon full argument by the Court of Appeals.

The question, therefore, is whether in this case the facts and circumstances are of sufficient strength to justify the Court in coming to the conclusion that the deed in question was intended as a mortgage and not an absolute conveyance of the property. And upon a careful examination of the evidence and deliberately considering the facts and circumstances attending the case, the character of the contract, the condition and conduct of the parties, I do not see how the conclusion can be escaped that the instrument was designed to be a mortgage merely, and not an absolute conveyance.

There are in this case circumstances which repel the idea of