

been intended only as a mortgage-security in the nature of a mortgage, though it be an absolute conveyance in terms," and of which, according to the enactment, the person for whose benefit such deed shall be made, shall not have the benefit or advantage of the recording thereof, unless the defeasance or qualifying instrument be also recorded therewith.

In this case no such defeasance or other instrument of writing has been executed, and, consequently, none such could be recorded. The bill of sale here stands unaffected by anything in writing between the parties, and we get at the fact that it was designed simply as a security for money loaned and to be loaned, from the answer of the grantee. This case, therefore, must be decided without reference to the Act referred to.

It appears that the bill of sale of December, 1847, which was duly acknowledged and recorded, was supposed to be defective, in consequence of the affidavit required by the Act of 1846, ch. 271, with reference to the *bona fide* character of the consideration, having been made by the grantor instead of the grantee, and that to cure this defect and confirm the conveyance, a second instrument of the same description was executed, acknowledged, and recorded on the 11th of April, 1848.

These conveyances are assailed by the complainant, as the permanent trustee in insolvency of Brown, the grantor, upon the ground of fraud under the statute of Elizabeth, and as having been made in derogation of our insolvent system. The allegations of the bill, both with regard to the alleged fraudulent and covinous character of the transaction, and the insolvency and contemplated application for relief, when the first bill of sale was executed are explicitly denied by the answers of both defendants, that is to say, the fraud is denied absolutely and altogether, and the charge that the conveyances were made in view of the insolvent laws, and in violation of their provisions, is positively denied when the first was executed, both defendants insisting, and Brown especially, who of all men could speak most confidently of his condition and purposes, that he was not, at the date of the first conveyance,