

complainants for the notes attempted to be secured by the second mortgage, but that they were given in fulfilment of the stipulation for the forfeiture of the sum of \$6,000, mentioned as the forfeit in the agreement of September, 1846. It has been urged by the counsel for the defendant, that as the Messrs. McKim were engaged in business, which unfitted them for acting as agents for the sale of the articles made at this factory, the stipulation under which the notes were given, was a mere cloak to cover the usury, and it cannot be denied that there is much weight in the suggestion, but as the first mortgage, which, in that view of the case, would come within the scope of the objection, is not assailed, and as in any event, the amount really due must be paid; and as, in my opinion, the defence of usury is not properly interposed, even as respects the second mortgage, I do not deem it necessary to consider this question, but shall very briefly inquire into the right of the complainants to a decree upon their last mortgage in opposition to the objection, that it is wholly destitute of consideration, legal or equitable, and was given to secure a forfeit.

It is admitted by the complainant's counsel, in his argument, that this mortgage was given in pursuance of the agreement of September, 1846, and its validity is maintained upon the ground that, as Mason had deprived them of the benefit of the agency, they were justly entitled to the amount, in the event, stipulated to be paid them. "That an obligation so founded, upon good consideration, and afterwards acknowledged by Mason, can no more be disturbed by his assignee, than it could by himself." It will be recollected, however, that the mortgagees are the complainants, asking to have this instrument enforced, and if the court is satisfied that it does not rest upon a good foundation, but that, on the contrary, it is without such a consideration as should commend it to the favor of a court of equity, it is its duty to refuse its aid to enforce it. The sum of \$6,000, and the other sums mentioned in the mortgage of October, 1848, is the forfeit which Mason agreed to pay in the event that he failed, or neglected to appoint the complainants his agents, as provided for in the agreement, and thus regarded,