

## No. 7751 Equity

M. E. Orendoff, one of the Mortgagors, in an amount greater than that stated in the Mortgage, which sum he held in a Fiduciary Character for the said Mary M. E. Orendoff, as it was due to her from her deceased father's estate of which the mortgage was administrator. It is further alleged, and there is certainly a most remarkable circumstance, that the sum on the sum named in the mortgage was agreed to be paid to Francis B. Orendoff "in order to get part of the funds due her (Mary M. E. Orendoff) from him, after her failure for about sixteen years to settle up her father's estate, and she was compelled to do this or get nothing of the amount that was due her, and upon the distinct promise that the said Orendoff was to release the mortgage in a certain period of time, which he never did." It may not be amiss, in passing, to observe that this is one of the most singular situations ever presented to a Court of Equity. It is beyond comprehension that creditors should give to their debtor a mortgage upon the former's real estate to secure the payment of definite sum which the mortgagor did not owe the mortgagee but which the mortgagee did owe to the mortgagor, and then that this should be done for the purpose of getting from the mortgagee a sum that was due by him to the mortgagor, when the only way of getting it, as availed in the answer, was by the mortgagee releasing the mortgage to him. Assuming this singular contention to be well founded, the situation would work itself out in this way: Francis B. Orendoff owed Mary M. E. Orendoff more than \$5,000 he had owed this for more than sixteen years. She was unable to collect it, but in order to induce him to pay it, she did not take a mortgage from him or his property but gave to him a mortgage on her property, and agreed to pay him the interest on that mortgage debt semi-annually, and then he agreed to release the mortgage in a definite period, but failed to do so. The same answer then goes on to allege that the assignment of the mortgage to Julia Wells was in fraud of the rights of the mortgagor and that the mortgagee had no right, either at law or in equity, to make