

NO 4215 Equity.

himself with, and then should have distributed, but failed to pay over, to her. The Contention cannot prevail.

But in addition to this, in testimony of Mr. Michael Walsh, the Attorney who prepared the release for \$3,000, for Francis Orndorff to sign it is distinctly stated that he understood from Francis H. Orndorff that the release for \$3,000, was intended by Francis H. Orndorff to be a gift from his sister, Mary M. E. Orndorff of that portion of his estate to which, as his sister, she would be entitled, upon a division of his estate, he having no children. Mr. Bernard in his testimony in this record on Cross examination stated that Francis H. Orndorff said in the presence of James A. Orndorff and Mary M. E. Orndorff upon the occasion when the Settlement of November 30 1891, was effected, that he (Francis H. Orndorff) had made them (James A. Orndorff and Mary M. E. Orndorff) advancements, and he was now securing himself by taking the Mortgage. Francis H. Orndorff, as further stated by Mr. Bernard, explained to his sister, and her husband the amount of these indebtedness, to him before the papers were signed. To permit any conjecture and inference drawn from the supposed improper inclusion of advancements in the first administration account, and from a failure to charge interest on the \$5,000 balance carried over from the first to the second Administration account, to overthrow the explicit testimony of Mr. Bernard and the irresistible Conclusion deducible from the circumstances attending the adjustment of all accounts between the parties on the 30th. of November 1891 and to ignore the solemn act of the parties themselves in executing a Mortgage to secure an ascertained indebtedness, would be a most extraordinary fraud. I have no shadow of doubt that the Mortgage was given for an actual subsisting indebtedness and the proof leaves no room to question that the release for \$3,000 was wholly without consideration.

Secondly, This brings me to the position taken by the guardian of Miss Hull, and singular as it may seem, her defence leads to a flat denial and contradiction of the position assumed by the Orndorffs. The Orndorffs, as has been seen, insist that there was no consideration for the Mortgage of