II. Debtor upon Judgment, &c., taking up Money of another upon a Mortgage, without Notice of the Judgment to the Mortgagee, shall lose his Equity to redeem.

III. Person Mortgaging twice, without Notice to the Second Mortgagee, loses his Equity. 2 Vern. 589, 590.

The earliest reported case on this Statute is Stafford v. Selby, 2 Vern. 589, in which it was held, 1°, that a person who will take advantage of the Statute must be an honest mortgagee; and therefore if a man has used any fraud or ill-practice in obtaining a second mortgage, he shall not have the benefit of the Statute; 2°, if a mortgage by the Statute becomes irredeemable, it will remain so in the hands of the assignee, though assigned in consideration of the principal, interest and costs due thereon; 3°, if a subsequent mortgagee redeems such mortgage, he shall hold the estate irredeemable; 4°, that if there are more lands in the second mortgage than in the first, that seems to be a case omitted out of the Statute; but the adding an acre or two shall not exempt it, for that may be a contrivance to evade. There the plaintiff sought to redeem, which was resisted upon the Statute, but redemption was decreed. From the year 1707 until 1860 no other case occurred, that has been reported; but in the latter year arose the case of Kennard v. Futvoye, 29 L. J. Chan. 553; S. C. 2 Giff. 81. The plaintiffs there prayed a declaration, that under the Statute the defendant had forfeited his right of redemption in certain mortgaged premises, and that the plaintiffs were entitled to hold the same, free from all equity of redemption, as if they had been purchasers. Their case was that the defendant, in executing to them a mortgage in July 1858, had concealed from them the existence of a prior mortgage in the month of April 1858, which he had given to another, and of a judgment which he had at the same time allowed to be entered up against him. It was shown that, on the occasion of approving the deed of July 1858, the clerk of the plaintiffs' solicitor asked the defendant if he had incumbered the premises since the date of a prior charge held by the plaintiffs, to which he replied, that he had not; and that then, in order to accommodate him, the deed had been executed in such haste as to leave no time to search the register. The Vice-Chancellor said, that looking at the language of the Statute, the remedy provided was merely negative, and there were no words, which shew an intention to give the mortgagee a right to come actively into Court to enforce the forfeiture which the Act provides. The third section enacts two things; 1°, that a mortgagor, granting a second mortgage without giving the second mortgagee notice in writing of the prior mortgage, shall not redeem, and 2°, that such second mortgagee **581** shall hold and enjoy the *mortgaged lands free from all equity of redemption, as if he had been a purchaser. To bring a case within the Statute there must be two mortgages. Now the Statute deals with mortgages in the ordinary sense; there are no words in the Statute, to authorize the Court to apply its provisions to any thing but what is, in the strictest sense, a mortgage. It was contended that equitable mortgages by deposit of title-deeds, and even all charges at law and in equity are within the Statute, if created by a party who had already mortgaged without notice. But it was held that if there were a simple charge without an equity of