GEORGE McDOWELL ET AL.
vs.
SAMUEL H. GOLDSMITH.

SEPTEMBER TERM, 185[illegible]

[VACATING CONVEYANCES—CHANCERY PRACTICE—EVIDENCE—LIMITATIONS.]

A MORTGAGE was executed in accordance with the provisions of the act of 1833, ch. 181, and upon the petition of the mortgagee in conformity with said act, a decree was passed by Baltimore County Court, as a court of equity, providing for a sale of the mortgaged property, for the payment of the mortgage debt. Upon a bill filed to set aside this mortgage, as fraudulent as against creditors, but not seeking to interfere with the decree, it was HELD—

That this court has not the power to vacate this decree of Baltimore County Court, that court, by the terms of the act of 1833, ch. 181, having concurrent jurisdiction with this court, to pass such decrees, and, therefore, the mortgage, the foundation of that decree, cannot be impeached here.

Lenders of money, being less, under the pressure of circumstances, calculated to control the free exercise of judgment than borrowers, may often be tempted to avail themselves of that advantage, in order to attain inequitable bargains. The leaning of courts of equity is, therefore, against them, and presumptions are not made in their favor.

The refusal of a defendant to answer, is not to be taken as an admission of the allegations of the bill which have not been answered: but this rule of chancery practice will not exempt a defendant from some degree of suspicion, because of his declining to answer interrogatories to which he might easily have answered, and without subjecting him, so far as the court can see, to the slightest annoyance or inconvenience.

The declarations of a grantor, that the object of the deed was to defeat her creditors, made at the time of the execution of the deed, though not in the presence of the grantee, are admissible in evidence as part of the *res gesta*, against the grantee upon a proceeding to vacate the deed for fraud.

Where the grantee first called on the scrivener who prepared the deed, and told him the grantor would call on him and give him instructions about it, and the grantor did call accordingly and give the instructions, according to which the deed was prepared and executed; and the declarations of the grantor then made, being offered to show that the object of the deed was to defeat the creditors of the grantor. It was HELD—

That by referring the draftsman of the deed to the grantor for instructions, the grantee must be considered, to some extent at least, as constituting the grantor his agent, and then, of course, the declarations of the agent made in the course of, and accompanying the transaction, would be admissible.

An original creditor's bill was filed on the 25th of August, 1845, and by an amended bill, filed on the 1st of April, 1851, certain other parties came in as complainants. HELD—

That though according to the law and practice of this court, they may come in as co-complainants with the originally suing creditors, yet limitations will run against their claims until they do so come in and file them.