

It is not insisted, by the defendant's counsel, that the usury which he charges against the second mortgage, fastens itself to, and infects the prior one. The latter is conceded to be a valid security, and the objection to the mortgage last executed, is, that it is wholly void, because given without any legal consideration to support it.

It appears, by an agreement between the plaintiff and Mason, executed on the 23d of September, 1846, that the latter agreed to constitute the plaintiffs his agents, for the term of two years, for the sale of cotton sail duck, to be manufactured at the factory, then about to be put in operation, and for their services so to be rendered, and in lieu of all other compensation, or commissions, Mason agreed to pay them the sum of \$3,000 per annum. And it was further stipulated, in consideration of the terms and conditions in the said agreement contained, to be performed on the part of the complainants, that if he, Mason, from any cause, should neglect, or fail to appoint, and put in possession of the said agency, the said complainants, that then, and in that case, he should forfeit, and pay to them, the sum of \$6,000, in equal quarterly payments, until the whole shall be paid, commencing from the 1st day of March next, so that they shall receive the same consideration as if they had acted as agents."

And it is in evidence, brought out by the cross examination of Henry A. Barling, a witness produced by the complainants, that the notes mentioned in, and secured by the second mortgage, were given for commissions, which were to be paid to the complainants, in default of Mason's placing in their hands certain goods, manufactured by him, for sale at the factory.

The same witness proved, in the examination in chief, that Mason sent the complainants no goods, because they were not in their line of business, and that consignments of them were made to other persons for sale, and he likewise proved, that the notes spoken of by him upon the cross examination, were given in pursuance of the agreement of the 23d of September, 1846, already spoken of.

It seems, therefore, to be quite apparent, from the proof of his witness, that no valuable consideration was paid by the