

It being proved that a fair purchase at a fair price, of the mortgaged property, was made by the mortgagee, the court refused to grant relief to the mortgagor on a bill to redeem, and ordered the bill to be dismissed.

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[The facts upon which the decree in this case is founded, are sufficiently set forth in the Chancellor's opinion.]

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THE CHANCELLOR:

There can be no doubt, that whenever the relation of mortgagor and mortgagee is shown to exist, the court views with distrust and disfavor, any arrangement between them, by which it is proposed, to transfer the equity of redemption to the mortgagee. And the parties will be held to their original relation of mortgagor and mortgagee, unless the transaction shall, upon a close examination into its circumstances, appear to be perfectly fair, and no advantage taken by the latter, of the former.

This principle has been adopted by the courts, upon the supposition, that the relation of mortgagor and mortgagee is calculated to give to the latter an undue advantage over the former: and that bargains of an inequitable character are not unfrequently the result of the dealings between parties standing thus towards each other. In the case of *Dougherty vs. McColligan*, 6 Gill & Johns., 275, the late chief justice of the Court of Appeals, said, "so there may be a sale of the equity of redemption to a mortgagee, where the transaction is fair, untainted with any advantage taken by the mortgagee, in the use of his incumbrance, or the necessities of the mortgagor to influence him to dispose of his estate for less than the real value."

The principle, however, which induces the courts to look with suspicion upon transactions between mortgagor and mortgagee, by which the equity of redemption is transferred to the mortgagee, is totally inapplicable to the case before the court, as there is not the least ground for imputing to the defendant, Hopkins, a disposition to avail himself of his incumbrance, to influence the complainant to part with his property, at an undue value. On the contrary, the uncontradicted evidence shows, that Hopkins' presence at the place where the property