of the property in the interval. there is moreover something suspicious in the account given by the defendant of the transaction and in his statement of the motives by which he was influenced as he says in making the purchase. He speaks of further advances made by him to Mrs. Osborne, subsequent to the date of the mortgage, which with his claim for interest on the mortgage debt amounted as he says on the day the deed of February 1844 was executed to $3250. and that on that day he paid her in money the sum of $4500. making the aggregate sum of $7750. which he says. formed the consideration for the deed, was the full value of the Equity of redemption, and more than he would have given therefor, under other circumstances.

The Court does not see in those circumstances, any reason or motive to induce the defendant to give more for the property than he would as he declares, otherwise have been disposed to give. He had a decree for his mortgage debt securing the payment of principal and interest, at the stipulated period, and if he had made the mortgage further advances as he states, that furnished no reason why he should advance in cash the large additional sum of $4500. to acquire the title. Lenders of money say the Court of Appeals in the case of Dougherty vs. McColgan 6 G&J 281 being less under the pressure of circumstances calculated to control the free exercise of judgment, than borrowers, they may often be tempted to avail themselves of that advantage in order to obtain inequitable bargains. The leaning of the Courts of Equity is therefore against them and presumptions are not made in their favor.

In this case all the advantages of position, were with the defendant. He had a mortgage and decree for a large sum of money and there is no circumstance connected with the transaction which would induce a man of ordinary prudence to give more for the property than his unbiassed opinion of its value, would prompt him to give.

The case moreover is singularly defective in evidence in regard to the payment of the consideration by the defendant and his refusing to answer, respecting his means to command such large sums is certainly a circumstance from which unfavorable inferences may be drawn.

It has been argued by his counsel that if the reasons given by the defendant for not giving this information were not satisfactory exceptions should have been filed and a fuller answer thus extorted from him, and there can be no doubt that his refusing 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, does not exempt the defendant, from some degree of suspicion, because of his declining to answer interrogatories, which might easily have been answered, and without so far as the Court can see, subjecting the defendant to the slightest annoyance or inconvenience. It will be seen upon referring to the case of Joice & wife vs. Taylor 6 G&J. 54 that the Court lay no little stress upon the caution displayed by the defendant in that case, in answering or avoiding to answer an allegation of the bill and that it evidently had some influence upon the decision of the cause. The Court cannot moreover shut its eyes to the extraordinary account given by the defendant of his dealings with Mrs. Osborne. It must strike the mind as strange indeed almost incredible that transactions involving such large amounts of money should take place, with such utter disregard of the ordinary

precautions, which persons having any regard for their interests usually observe. The defendant says. he kept no book of accounts. In making his loans to the said Elizabeth Osborne, he sometimes took her note, at other times he would make a loose memorandum thereof, and again he would suffer the loan to rest in the recollection of the parties. These statements are made with reference to the debt of $21500. for which the mortgage of Nov. 1842 was given but he does not appear that the defendant was more careful in his subsequent transactions with Mrs. Osborne, or that he kept any accounts of the advances which he alleges he made her after November 1842 and which constituted a part of the consideration for the conveyance of February 1844. There is unquestionably about this whole case a character of reckless carelessness, which is absolutely amazing and which in the eyes of prudent men cannot fail to stamp it with suspicion. The parol evidence also is strong in opposition to the deed. In view of all the circumstances which have been mentioned there would perhaps be quite proof enough to overthrow the conveyance of the Equity of redemption, without the evidence of Mrs. Spurrier, but I am of opinion that the declarations made by Mrs. Osborne to him, at the time she executed that conveyance are admissible.

In the case of Merrill vs Meachum 5 Day 341 is authority, it concludes the point. In that case the declarations of a grantor made at the time of the execution of the deed the grantee not being present, were admitted in evidence as part of the res gesta and as constituting an essential part of the facts necessary to understand the transaction. The force of that case is attempted to be broken by remarks upon the flagrant character of the fraud, which the grantor was about perpetrate upon his creditors, but in answer to this it may be said that the grantee, was no party to this fraud not even having any knowledge at the time of the execution of the deed and that when it did come this knowledge he paid a valuable consideration for so much of the property as he agreed to accept. It seems to me however that the admissibility of this description of evidence property cannot depend upon the degree of the fraud, whether it be more or less enormous; or whether there is or is not fraud in the transaction, is to be ascertained, when the proof is introduced, and to say, that the proof shall not be offered until the fraud is established, is to say, it shall not be offered, until the necessity from its introduction is removed. In truth in this case of Merrill vs. Meachum the gross character of the fraud, was made out by the declarations of the grantor. In the case now under consideration there is a reason for letting in the declarations of the grantor which did not exist in the case in Day. In this case 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. She did call accordingly gave the instructions, and the deed was prepared and executed, and her declarations then made are now offered to show that the object was to defeat her creditors. It seems to me 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