the Court will not exercise its special jurisdiction. *Sichel* v. *Mosenthal*, 30 Beav. 371. See *Thorpe* v. *Hosford*, 20 W. R. 922.

Different considerations arise when a person is indebted to another and agrees to give him a mortgage by way of security. This is, of course, an agreement which is within the Statute of Frauds as pertaining to land, and requires to be in writing. Here the authorities are at variance as to when the Court will enforce it. According to *Dighton* v. *Withers*, 31 Beav. 433, this agreement forms of itself an equitable mortgage. There a person was indebted to A. and gave him a memorandum in writing promising, whenever required, to execute a legal mortgage of his equity of redemption in certain premises. The Master of the Rolls held it was a perfectly good equitable mortgage, and enforced it. But in *Crofts* v. *Feuge*, 4 Ir. Ch. 316. Brady, L. C., held that an antecedent debt was not *per se* any consideration in equity for an agreement to give additional security. He says if the creditor wishes to obtain further security by a new agreement there must be further consideration. An agreement to forbear to sue would be sufficient for that purpose. It may be that the report in *Dighton* v. *Withers* omits to state that forbearance was given, as would probably be the case. See also *Carew* v. *Arundel*, 5 L. T. N. S. 498; s. c. 8 Jur. N. S. 71. In *Ashton* v. *Corrigan*, L. R. 13 Eq. 76, it appears from the facts that the defendant had agreed to execute a mortgage to the plaintiff with absolute (*i.e.* an immediate) power of sale in consideration of an antecedent debt. It does not appear what the consideration was. Vice Chancellor Wickens doubted whether a contract by which the mortgagee may enforce the power of sale a day after the execution of the mortgage was one which the Court will specifically enforce; but he granted the relief sought in that case, because there was no contest, and on the authority of some unreported cases referred to in Seton on Decrees. These cases, taken together, leave the matter still doubtful whether the Court will, in a litigated case, give specific effect to an agreement to execute a mortgage for an antecedent debt, if there is no stipulation that the intended mortgagee shall forbear to sue.

On the other hand, in *Herman* v. *Hodges*, L. R., 18 Eq. 18 an advance of money had been made upon an agreement to execute a mortgage therefor with an immediate power of sale. The defendant had actually received the money and then refused to give the security. Lord Selborne said he had no doubt in making a decree therefor unless the defendant was prepared to pay off the advance at once. This was, of course, a plain case of fraud on the part of the defendant, and the Court will be astute to hold him to the letter of his engagement, after he has aeceived the consideration agreed upon.

In connection with this subject two other cases may be noted. In the absence of an express contract, the mortgagee has no claim against the intended mortgagor for the costs of investigating the title where the treaty ends, even through the mortgagor's default: *Wilkinson* v. *Grant*, 18 C. B. 319. When the treaty ends because the mortgagee is dissatisfied with the security after investigation, the mortgagor has no claim for costs attending the investigation, but this is otherwise if the negotiations go off without such reason.: *Carter* v. *Merriam*, 32 L. T. N. S. 663.

UNNECESSARY AND DISCORDANT JUDICIAL OPINIONS.

When one considers how cases involving adjudication upon new, and even upon