

*Judgment.*—VANKOUGHNET, C.—In this case the bill must be dismissed with costs, as the equity which the plaintiff sets up against the defendant *Taylor* is displaced by the evidence. There is an unfortunate contradiction in the testimony of the two professional gentlemen, Messrs. *Start* and *Gray*, only reconcilable as to what occurred in Mr. *Start's* office, on the assumption that M. *Start* took it for granted that all parties present, including Mr. *Gray*, knew of the agreement by which *Leigh* had consented that the mortgage to himself should be postponed to the deed to *Start*. *Start* swears that this was well understood between the parties before they met in his office. It seems an extraordinary arrangement for *Leigh* to have made, and only explicable by his anxiety at once to get money, which Mr. *Start* was to advance and did advance out of his own means on the express understanding that he was to have a free title to the property to enable him to raise money on it to re-pay himself his temporary advances. While Mr. *Gray* and *Start* contradict one another as to what passed in the office of the latter, another witness, *John Start*, in his affidavit, which it was consented should be read as evidence, swears positively that *Leigh* agreed to be postponed to *Start*. When this agreement was made he does not say; I offered to the plaintiff the opportunity of cross-examining him under a commission, as he resides in Buffalo, but this was declined, and I must therefore assume the affidavit to be true, and so treating it, it turns the scale in favour of the defendants.

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