appearing. Every presumption is in favor of the correctness of the ruling below, and until we know from the record what the paper offered in evidence was we cannot say that the court improperly excluded it. *Judgment affirmed.*

Mr. Isaac I. Post and *Mr. J. Hubley Ashton* for plaintiffs in error.
Mr. Enoch Totten for defendant in error.

SAWYER *v.* WEAVER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 239. October Term, 1877. — Decided March 25, 1878.

A deed of trust from the vendee of real estate to the vendor, to secure the payment of part of the purchase-money, recited that there was an indebtedness on the property of eight promissory notes, each for $1000 with interest, as appeared by a deed referred to, which were to be assumed by the vendee as part consideration of the sale, and the vendor saved harmless therefrom. By reference to the deed it appeared that these notes were payable in one, two, three, etc., years respectively, with interest; *Held*, that the interest on each of these notes was payable on its maturity, and, no fraud or mistake being shown, that the obligation of the vendee to protect the vendor extended to the payment of the overdue interest on the specified notes, as well as the principal.

In equity. The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

The undertaking on the part of Frederick P. Sawyer, the decedent, in respect to the payment of the indebtedness to North is thus expressed in the deed of trust executed by him, on receipt of the conveyance from Weaver, to secure the payment of the balance of his purchase-money:

"And whereas there is now an indebtedness on said property of eight promissory notes of S. D. Castleman and said Weaver, each for $1000 with interest, as will appear by deed recorded in liber No. 640, folio 474, and part of the consideration of this sale is that the said Sawyer should assume said indebtedness and pay the same, and hold the said Weaver harmless therefrom."

The deed referred to is dated March 24, 1871, and states the indebtedness to be "in the sum of ten thousand dollars, for which amount he (North) holds the ten joint and several promissory notes of the said Castleman and Weaver, bearing date on the 17th day of March, A.D. 1871, each for the sum of one thousand dollars, pay-

able, respectively, in one, two, three, four, five, six, seven, eight, nine and ten years after date, to the order of said Castleman and Weaver, with interest at the rate of seven per cent per annum."

Nothing would seem to be clearer than that this created an obligation on the part of Sawyer to pay the indebtedness of Castleman and Weaver to North upon the property. The assumption is not of eight thousand dollars, but of the indebtedness evidenced by eight of the notes described in the deed referred to, and this was eight thousand dollars with interest from March 17, 1871. The notes were not payable with interest annually, but with interest from date, which implies that the interest accruing from date to maturity was payable at maturity with the principal. Two of the notes described in the deed had matured before the sale to Sawyer, and as eight only were assumed, the presumption is, in the absence of anything to the contrary, that the assumption was of the eight to mature thereafter. As express reference is made in the deed by Sawyer to that by Castleman and Weaver for a description of the indebtedness assumed, the same effect is to be given the contract of Sawyer, embraced in his deed, that would be if the language in the deed referred to had been in terms incorporated into his own.

It is said, however, that the deed from Weaver to Sawyer, executed as it was at the same time with that of Sawyer and as part of the same transaction, must be construed with the deed of Sawyer for the purpose of determining what the contract between the parties actually was. This is undoubtedly so, but we do not think it alters the case. The items of the consideration, as recited in the deed of Weaver, it is true, amount in the aggregate to only twenty thousand dollars, and in the description of the debt to be assumed, special mention of interest is omitted, but the deed of Castleman and Weaver is referred to, and there is nothing to indicate an exclusion of the interest which that deed describes from the debt assumed.

It is conceded on the part of the appellants that the deeds taken together contain the contract of the parties as finally reduced to writing. Parol evidence, therefore, is not admissible to contradict or vary it. An effort is, however, made to have the contract reformed on account of a mutual mistake of the parties as to the amount of the North debt, or the fraud of Weaver in concealing it. The pleadings in the case are not framed with a view to that relief, but if they were, the evidence fails entirely to make out such a case. Reference is given to the deed of Castleman and Weaver for a

description of the indebtedness, and it is there found distinctly stated. There could, therefore, have been no concealment, and there is no pretence whatever of any false statement. If Sawyer had exercised ordinary prudence he need not have been mistaken, and the testimony of the witness who drafted the conveyances, if it is to be relied upon, shows most conclusively that he was not.

The decree is affirmed.

Mr. T. T. Crittenden and *Mr. George W. Paschal* for appellant.

No appearance for appellee.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY *v.* BURNSTINE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 240. October Term, 1877. — Decided March 25, 1878.

A mortgagee who has notice through his agent in the negotiation of the loan, that the discharge of a prior mortgage on the property was fraudulently obtained, cannot acquire the property discharged of the prior incumbrance, by purchase at a sale under decree of foreclosure of his own mortgage.

The question is one of fact; and this court cannot see that the evidence is so clearly against the decision of the court below, that it would be justified in reversing it.

The case is stated in the opinion.

Mr. Justice Hunt delivered the opinion of the court March 25, 1878.

The contention in this case arises upon the priority of the security and the trust deeds held by the respective parties.

The first deed was made by John N. Hubbard to Wm. H. Ward to secure the payment of a note of $3000, payable thirty days after its date, made by Hubbard, payable to and held by James M. Ormes. The papers bear date of January 31, 1872, and within three days after that date the note and the trust deed were transferred and delivered to the plaintiff, Burnstine.

The trust deed under which the insurance company makes claim bears date of November 11, 1872, made by the same Hubbard to trustees, to secure a loan of $12,000 made by the insurance company to Hubbard. The insurance company admits in its answer that at the time of making this loan and receiving its security therefor, the deed to Ward was on record and known to it, and was a