

\*THOMAS STANLEY, Appellant, *v.* JOHN GADSBY, ALEXANDER MCINTYRE and GEORGE CONER, Executors of JAMES WALKER, deceased, and JAMES RHODES.

*Usury.—Injunction.*

A. filed a bill in the circuit court, for an injunction, to prevent the sale of property by a trustee, to whom it had been conveyed to secure the payment of a sum of money borrowed by him at usurious interest; the money borrowed had not been repaid, and the bill sought no discovery of the usury from the defendant, but averred that the complainant would be able to prove it by competent testimony; the circuit court dismissed the bill: *Held*, that the decree of the circuit court was correct.

This is substantially an application for relief from usury; and the consequence of granting the injunction would be, relief upon terms at variance with the rule of equity, so fully recognised at this term of the court, in case of *Brown v. Swann*, that he who seeks the aid of equity to be delivered from usury, must do equity, by paying the principal and legal interest upon the money borrowed. The complainant does not offer to do so in this bill; this is essential to every such application in a court of equity: first, to give the court jurisdiction; and to enable the chancellor, if he thinks proper to do so, to require the payment of principal and interest before the hearing of the cause. The relief sought in such cases in an exemption from the illegal usury; the whole inquiry on the hearing, is to establish that fact, and to give relief to that extent; whenever a complainant does not comply with the rule, by averring in his bill his readiness or willingness to pay principal and interest, he can have no standing in a court of equity.

APPEAL from the Circuit Court of the District of Columbia, and county of Washington. This was a bill filed in the circuit court, by the appellant, against the executors of James Walker, praying for an injunction on a trustee, to prevent his proceeding to sell certain real estate, conveyed to him to secure the payment of a sum of money loaned to the complainant; and for relief against an alleged usurious contract. The circuit court dismissed the bill. The case is fully stated in the opinion of the court.

The case was submitted to the court, without argument, by *Swann*, for the appellants; and by *Coxe*, for the appellees.

WAYNE, Justice, delivered the opinion of the court.—This is an appeal from the circuit court of the United States for the district of Columbia, and for the county of Washington. \*The complainant alleges, that he \*522] borrowed a sum of money from James Walker, at usurious interest; and that to secure the payment of it, he executed a deed of trust upon his house and lot, in Washington, to the defendant, James Rhodes; in which he covenanted, if default should be made in the repayment of the loan, at the stipulated time, that the trustee, Rhodes, shall, upon the request of said James Walker, or his executors, administrators or assigns, sell the premises to the highest bidder, and convey the same to a purchaser in fee-simple: notice of the sale being given, of the time of sale, in the way mentioned in the deed of trust. He further complains, that the executors of Walker have directed Rhodes to proceed to a sale of the house and lot; that he had advertised them for sale; and he admits, that he had not repaid the money borrowed. The complainant seeks no discovery of the usury from the defendant; but avers that he will be able to prove it by competent testimony, and waives all penalties, to which he may be entitled, to arise out of this transaction. He prays for an injunction to prevent the sale of the property by the trustee, until the question of usury shall be decided at law;

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but does not ask the court to aid in any way as auxiliary to any case pending at law.

This, then, is substantially an application for relief from usury; and the consequence of granting the injunction would be relief upon terms at variance with the rule of equity, so fully recognised at this term of the court, in the case of *Brown v. Swann* (*ante*, p. 497); that he who seeks the aid of equity, to be relieved from usury, must do equity, by paying the principal and legal interest upon the money borrowed. The complainant does not offer to do so in his bill. This is essential to every such application in a court of equity: first, to give the court jurisdiction, and to enable the chancellor, if he thinks proper to do so, to require the payment of principal and interest, before the hearing of the cause. The relief sought in such cases is an exemption from the illegal usury; the whole inquiry on the hearing is to establish that fact, and to give relief to that extent. Whenever, then, a complainant does not comply with the rule, by averring in his bill, his readiness or willingness to pay principal and interest; he can have no standing in a court of equity. The decree of the circuit court is affirmed.

THIS cause came on to be heard, on the transcript of the record \*from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was [\*523 argued by counsel: On consideration whereof, it is decreed and ordered by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.

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\*JOHN DENN, Lessee of CHARLES C. SCOTT and others, v. THOMAS [\*524 REID, JUN., and others.

*Recording of deeds.*

Construction of the acts of the legislatures of North Carolina and Tennessee, relative to registering and recording deeds for land, in Tennessee, in force in the state of Tennessee.

CERTIFICATE of Division from the Circuit Court of West Tennessee.

This case was submitted to the court, on a printed argument, by Mr. Leigh. (a)

McLEAN, Justice, delivered the opinion of the court.—The plaintiffs in this case, brought an action of ejectment against the defendants, in the

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(a) The following order was made in this case:

Lessee of Charles C. Scott, et al., Plaintiffs in error, v. Thomas Reid, Jr., et al. Whereas, upon an inspection of the printed argument of Thomas Washington, Esq., of counsel for the plaintiffs in error in this cause, it appears to the court, that some of the passages thereof, and more particularly those on pages 112, 113, 114, 115, 117, 118, 119, 122, 123, 124, 125, 126, 130, 131, 132, 134, 145, 146 and 150, are reflecting on a member of the court, and thereby disrespectful to the whole court: It is thereupon now here ordered by this court, that the said passages or parts of said argument, and all others which may be deemed disrespectful to any member of the court, be and the same are hereby stricken out; and that this order be entered on the minutes of this court.