

for some of his houses, to advise him about his business, and to procure these loans for him; and that the amounts which the appellant now charges constituted usurious interest on these loans were retained by him for his services in collecting these rents, obtaining these tenants, and procuring these loans. A large amount of correspondence between Mancourt and the appellee appears in this record, which does not tend to prove that the former had any authority to loan any money of the latter upon his own judgment, but that he did present applications to the appellee for loans, and after the specific investments were accepted by him the appellee sent the money to Mancourt to pay for them.

This brief summary of the evidence is sufficient to show that the decree below ought not to be reversed. It is a settled rule of practice in equity in the national courts that "where the court below has considered conflicting evidence, and made its finding and decree thereon, they must be taken as presumptively correct, and unless an obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, the decree should be permitted to stand." *Warren v. Burt*, 7 C. C. A. 105, 110, 58 Fed. 101, 106, and cases there cited; *Gunn v. Black*, 8 C. C. A. 534, 538, 60 Fed. 151, 155; *Latta v. Granger*, 68 Fed. 69, 71. Where the notes bear lawful interest upon their face, it is necessary to overcome this written evidence, and the legal presumption that the parties to them have not violated the law, in order to establish the charge of usury, and this requires strong proof. *Bank v. Waggener*, 9 Pet. 378, 379; *Hotel Co. v. Wade*, 97 U. S. 23; *Call v. Palmer*, 116 U. S. 98, 101, 102, 6 Sup. Ct. 301. The burden of making this proof rested upon the appellant in this case, *Olmsted v. Security Co.*, 11 Neb. 487, 9 N. W. 650. His defense of usury must fail, unless he established by a preponderance of proof that Mancourt was the agent of the appellant, and that the usurious agreement was made. In view of the rules of evidence to which we have referred, of the undisputed fact that the mortgagee never took more than lawful interest himself, and never had knowledge that the mortgagor had paid more, and in view of the conflicting evidence as to the agency of Mancourt, and as to the purposes for which, and the agreement with the appellant under which, he kept the moneys he retained, we are unwilling to hold that there was any obvious error of law, or any serious mistake of fact, in the general finding of the court below that the defense of usury was not sustained by this evidence. The decree below must be affirmed, with costs, and it is so ordered.

CENTRAL TRUST CO. OF NEW YORK v. RICHMOND & D. R. CO.
(DODGEN, Intervener).

(Circuit Court, N. D. Georgia. May 30, 1895.)

No. 551.

EQUITY PRACTICE—REOPENING CASE BEFORE MASTER.

After a master in chancery had prepared a draft of his report, and submitted it to the parties, to afford them an opportunity to except before

him prior to its filing, one of the parties petitioned the master to reopen the case, and give him an opportunity to put in certain material testimony which he had inadvertently omitted to offer, which petition was granted. *Held*, that the action of the master in reopening the case would not be disturbed by the court, it not appearing that he had abused his discretion.

J. T. Pendleton, for intervener.
Jackson & Leftwich, for defendant.

NEWMAN, District Judge. The practice in this district, following what is believed to be the correct chancery practice, is for the master in chancery to prepare a draft of his report, and notify counsel of the same, to which they must except before him, prior to the filing of the report regularly by the master in the clerk's office, in order to have their exceptions considered by the court after the same has been filed. On the filing of a draft of the special master's report in this case, counsel for the intervener called the attention of the special master to the fact that by inadvertence they had failed to put in certain testimony which was material to their case. The special master, after hearing the matter, determined to reopen the case, and hear the evidence. The question submitted here is whether the court will overrule the master's action in reopening the case for the admission of additional testimony. At that stage of the case the question of reopening it for hearing further evidence was a matter for the special master, and the court ought not to interfere with his discretion, unless it has been abused. The petition to the special master to reopen this case was sworn to by the two counsel for the intervener, and in the petition they state that the omission of the testimony which they now desire to introduce was inadvertent, caused by the long duration of the case and the manner in which it was tried, in connection with several other cases, and this, they claim, confused them as to what testimony was really in. I am unable to see that the discretion which the special master certainly ought to have in such matters has been abused. He still had the case within his control. He had prepared a draft of this report, and given counsel notice of the same, but it had not been regularly filed in the court, so as to take it out of his power to act in the matter. He believed that under the facts it was his duty to reopen the case, and the court will not interfere with him in so doing.

TRAVELERS' INS. CO. OF HARTFORD v. HENDERSON.

(Circuit Court of Appeals, Eighth Circuit. August 5, 1895.)

No. 527.

1. INSURANCE—REPRESENTATIONS OF AGENT.

When a policy of insurance describes the class of risks thereby insured, and the assured has a fair opportunity to read the instrument, the company issuing the same will not be bound by representations made by its agent, in good faith and without any intent to deceive or to defraud, that the policy covers certain risks that are not in fact within its provisions. In construing the provisions of a written agreement, and in determining