according to the award of five commissioners, The clause in the will having relation to this subject being in these words, "I do hereby order and direct that the same shall be done by five persons who shall be disinterested and of respectable standing to be appointed by the Orphans Court of Baltimore County, or any other Court of record in the State of Maryland, of which appointment my executor Zebulon Cooch and Alexander Fridge, if living shall be two, and the award decision or allotment of any three of them shall when made be returned to and recorded among the records of the Orphans Court aforesaid or among the records of Baltimore County Court and shall be final and conclusive on all and each of my residuary devisees and each of their legal representatives. That on the petition of the heirs of Weide, the Orphans Court appointed the Commissioners, who, on the 9th day of June 1831, made return of their appointment and allotment which was recorded among the records both of the Orphans Court and of Baltimore County Court that according to such appointment and allotment Mary Ann Norris (one of the children of Weide) had allotted and appointed to her two lots of ground on Cheapside, one of which the aforesaid Weide obtained by deed dated 21st day of January 1805 from a certain R. Jones and the other, by deed dated 9th Feb 1792 from a certain B. Griffith that the complainant had allotted and appointed to her a lot of ground fronting on Franklin Lane, and running back to the lot of ground mentioned in the deed from Griffith to Weide already referred to in that the said Mary Ann Norris and her husband subsequently, on the 27th June 1832, mortgaged the two lots of ground which had been apportioned to the said Mary to Rachel Weide to secure the payment of $6000 that afterwards on the 16th June 1842, the said Mary & her husband mortgaged the same lots of ground to secure the payment of a debt due to Israel Norris and Jacob Paul Jones of Pennsylvania, Rachel Weide uniting in said instrument for the purpose of releasing any claim as dowresses she might have on said property in favor of the mortgagees that the debt due Messrs Morris and Jones not being paid the mortgage was foreclosed and a decree passed by this Court for its sale on the 27th day of March 1844 that at said sale Jacob Paul Jones became the purchaser of the two lots, which sale was reported to this Court and finally ratified. The bill alleges that in the allotment to Mary Ann Norris, by the commissioners of the lot mentioned in the deed of Jones to Weide a mistake was committed that instead of this lot the one mentioned in the deed from Hutchings to Weide should have been allotted to her, and that it was the intention of the commissioners to have done so and their belief, at the time of the apportionment that such was done that the lot mentioned in the deed from Jones should have been allotted to complainant, and that the commissioners intended to have done so, that the said complainant believing that the last mentioned lot had been apportioned to her received the rents and profits of the same that at the time of the sale her counsel gave notice of her claim to said property. The defendants Morris & Jones admit the

notice given at the time of sale of complainants claim to the lot mentioned in the deed from Jones to Weide, but deny they had any notice of such claim until long after the execution of the mortgage to them by Mary Ann Norris and her husband, that the proceeds of the sale are wholly inadequate to pay the debt intended to be secured by the mortgage, and that there remains still a considerable sum due to the said Morris and Jones, From the Testimony of Thomas Ferguson it appears, that it was intended by the devisees, that the particular lot in question should have been allotted to the complainant instead of to Mr. Norris, and by the testimony of Z. H. Cooch and Joseph Wilkins that there were conversations had on the subject, as the complainant taking the lot at a less valuation than that which had been made by Mr. Weide in his lifetime &c &c On this State of facts the complainant asks that this Court, by its decree shall empower some Trustee to convey to her the lot in question, and by the same decree, to declare the mortgage executed by Mary Ann Norris and her husband void and of no effect so far as this particular lot is concerned. Admitting that there are circumstances in the cause which show it to have been the intention of the devisees of George Weide and of the commissioners appointed in pursuance of the authority to that effect contained in his will, to have had the lot in controversy allotted to complainant instead of to Mr. Norris the question is, how does this state of case affect the defendants, Morris & Jones, They were non residents of Maryland at the time, and have been ever since the execution of the mortgage to them, When they agreed to receive the mortgage, they applied to an experienced conveyancer Mr. Spurrier, to have the proper examination made which as Mr. Nelson Spurrier swears, was done to the best of the ability of the firm of which he was one. Mr. Weide, by his will had provided that the award and allotment of the commissioners, or that of any three of them should "be final and conclusive on all and each of my (his) residuary devisees and each of their legal representatives" The award and allotment of the commissioners was made and returned for record on the 9th June 1831, The mortgage from Mary Ann Norris and her husband bears date 16th June 1842 nearly eleven years after. During the whole of the intermediate time, the records both of the Orphans Court and of the Clerks of Baltimore County Court show the title of the lot to be in the mortgagor Mr. Norris, During the whole of this time, no steps were taken to have corrected any error which may have existed but the records were there left to evidence to the world that the commissioners having discharged the duty assigned to them, the parties interested were content with the manner in which had been performed. With this evidence of the title being in the grantor, the defendants Morris & Jones accepted of the mortgage to them without notice of any kind, as they declare in their answer, of the claim of the complainant with the assurance of Mr. Spurrier that the title was all right. Now the question is how are these defendants situated, What is their position in the eye of a Court of equity. After a thorough examination of the leading cases on the subject, Mr. Justice Story in 1st vol, Equity Jurisprudence section 409 thus