to the said Elizabeth Anne or to her assigns or others in any way claiming by or through her for which sum of money the said John Welham in his lifetime recovered judgments against your Respondent at the October Term of the Anne Arundel County Court for the year one thousand eight hundred and forty eight the one for the interest due on the said debt and the other for the principal thereof on which an appeal hath been taken to the Court of Appeals by this Respondent as well more fully appear by Exhibit S.L.L. No. 2 all of which well more fully appear by Short Copies of the said Judgments and Copies of the Causes of action therein herewith filed marked Exhibit S.L.L. Nos. 1. 2 & 3. which he prays may be taken as parts of this his answer with his other Exhibits herewith filed,

This respondent further answering says that on the said first day of April 1843 he Came to a settlement with the said Margaret Johns Ray in her life time of all the debts due by him to her including the said mortgage debt and on that settlement your respondent became indebted to the said Margaret in the sum of one thousand and thirty six dollars and sixty three cents current money and then and there executed and delivered to her his bond for the said sum of money a copy of which bond is filed with the answer of her executor Jacob W Bird marked M.L.R. No. 2 that on the third day of March in the year Eighteen hundred and forty six he came to a settlement with the said Margaret of the interest due by him to her on account of the said bond and gave his promissory note for the amount thereof towit eighty one dollars and seventy two cents which he hath since paid as appear from Exhibits herewith filed marked Exhibit S.L.L. Nos. 1. 4 and 5 and that the only debt now due by this respondent to the Estate of the said Margaret on account of the said mortgage debt or any other is the said bond of $1036.33 with the interest thereon from the third day of March eighteen hundred and forty six for which debt the said Jacob W Bird at the October Term of Anne Arundel County Court instituted suit against your Respondent which suit is yet pending as appears by the docket entries thereof herewith filed duly certified marked S.L.L. No. 6 No. 7.

This Respondent further answering says that he knows nothing of the assignment of the said debt due to Elizabeth by him but that he believes she and her husband Elliott the Co-defendant did assign the same after their intermarriage but this defendant knows nothing of the Consideration thereof. He denies that the Complainant by vertue of the said assignments can claim any more than the debt due by this Respondent as above admitted He avers that the Complainant had notice of the true amount due as stated in this answer, that he had the means of knowing all the dealings between the parties, and this Respondent denies that more than the debt so as aforesaid admitted to be due was assigned to the intestate of the Complainant or ever intended so to be.

This respondent further answering says that he is advised and will insist that the recovery of the judgments aforesaid by the Complainants on the said bond executed by this Respondent to the said Elizabeth and for the interest due is an election by the Complainant to proceed at law to recover all due by this respondent to him and having so recovered this respondent denies that the Complainant can now file this bill and he prays that your Honor will now entertain this

defence as if in any other manner brought before this Court and he prays that if the said Complainant has not concluded himself by his said election to proceed to enforce the recovery of his aforesaid debt at law that he may now be required to elect so to do and in the event of his election to proceed at law then that this bill be dismissed with Costs and in the event of his electing to proceed in this Cause then that he be enjoined by this Court from other and further proceedings at law on the aforesaid judgments.

This Respondent admits that the parties are all correctly described and their rights property set forth except in the particulars before stated in this bill, He does not deny the execution of the papers or any of them as stated in the Bill though he is not acquainted with the signatures of the said Ellicott or Yeadhall he admits the Exhibits filed with the bill to be what they profess to be except those in relation to which he has specially answered above and he prays that the said bill may be dismissed and be allowed his costs of suit.

A Randall for Respondent.

On this 10th day of July before me the subscriber the Recorder of the City of Annapolis Maryland personally appears Stephen L Lee and makes oath that the facts and statements in the said answer set forth are true to the best of his knowledge and belief.

B F B Worthington.

Mem: The Exhibits referred to in the aforegoing answer will be found returned with the Commission.

And afterwards at the same Term the Chancellor passed his opinion in the said Cause in the words following towit,

Wilhelm Adm of Wilhelm vs Stephen L Lee et al. } In Chancery July Term 1849.

The agreement submitting this case presents two questions the first is whether a mortgagee who has recovered judgments at law for his debt, upon one of which an appeal has been taken and is now pending in the Court of appeals the other remaining unsatisfied in the County Court can maintain a bill in equity for a foreclosure and sale of the mortgaged premises and secondly whether a mortgagee who has simply instituted a suit at law but recovered no judgment is entitled in this Court to such a decree.

The rule appears to be perfectly well settled that a mortgagee may sue at the same time at law upon his bond or covenant, and in Equity upon his mortgage the case of a mortgage forming an exception to the general rule that a party shall not be permitted to sue at law, and here at the same time for the same debt, Indeed the general rule itself applies only to cases, where the demand at law and in equity are equally personal and not where the cumulative remedy is in personam while the other remedy is upon the pledge.

The remedy in this Court upon the mortgage, is in rem and that at law in personam.

Dunkley vs Van Buren 3 John Ch 330

Jones vs Conde 6 John Ch Rep 77

In 4 Kent 183 the Chancellor says, the general rule is that the mortgagee may exercise all his rights at the same time and pursue his remedy