in Equity upon the mortgage and his remedy at law upon the bond or Covenant accompanying it Concurrently

The Counsel for the defendant supposes that the rule upon this subject in New York is founded upon the prohibition now existing there which forbids the sale at law of the mortgagors equity of redemption.

But the rule permitting the mortgagee to pursue concurrently his remedies at law and equity existed prior to the prohibition which is the creature of the revised statutes and Cannot therefore be founded upon it. It is true as suggested by the commentator, there were before the statute difficulties attending the sale of the equity of redemption but these difficulties did not induce the Court of Chancery to forbid the mortgagee to proceed at the same time at law and in equity, though they subsequently induced the Legislature to interdict the sale at law of the mortgagors interest.

The argument of the defendants Solicitor in this case is that as the judgment and execution at law give the Creditor all the advantages of a decree and indeed advantages which the decree will not give there can be no necessity for harassing the defendant with a double suit and subjecting him to useless Costs. It is by no means so clear however that the judgment and execution at law will give the Creditor the full benefit of his specific security.

There are Cases to be sure in which it has been decided that upon an execution issued on a judgment at law the equity of redemption only is sold, and the mortgagee may afterwards maintain Ejectment against the purchaser of the premises in order to enforce the payment of the balance of his claim, but as Chancellor Kent says, this supposes that the purchaser at the Sheriffs sale knew of the existing mortgage and purchased subject to it. 4 Kent 183 Note C

And in Pennsylvania it has been decided that the purchaser will hold the land discharged of the lien of the mortgage.

Pierce vs Patter 7 Watts 475

Berger vs Huster 6 Wharf 210

In the Case of the Vendor who has proceeded at law against his vendee and sold the land under a fieri facias the Court of Appeals have said the benefit resulting therefrom might not be Commensurate with his equitable lien that such a seizure and sale, could only transfer the interest of the vendee at the date of the judgment and would be subject to all judgments liens and outstanding equities existing against the vendee anterior to that time all such secret and unknown equities would remain unimpaired by such judicial sale

Richardson vs Stellinger 12 G & J 183

And it was remarked by the Court in the same case that after a sale was made by the vendor suing and recovering a Judgment at law for the purchase money he would Come with an ill grace into a Court of Equity seeking to sell the original entire interest of the vendee in the property (if indeed he could Come at all, and thereby annihilate the title of a purchaser acquired under a judicial sale made at his the vendors instance and for his benefit.

If then it be doubtful and it is impossible to read the language of the Court of Appeals entertaining grave doubts upon the subject whether after a vendor has recovered judgment at law for the purchase money and sold the title of the vendee under a fieri facias issued upon it he can afterwards Come into equity and enforce his equitable lien it is manifest the remedy at law so far as the land sold is Concerned, falls far short of the remedy in this Court when it is recollected that the purchaser; takes the title of

the vendee subject to judgments liens and outstanding equities existing against the vendee prior to the Judgment recovered by the vendor under which the sale is made, It may be that a distinction exists between the Case of a vendor proceeding in equity to enforce his lien after a judgment against and sale by the Sheriff under a fieri facias issued upon it of the vendees interest, and the case of a mortgagee suing in this Court after having sold the title of the mortgagor under his judgment at law recovered upon the bond or covenant, and that in the latter case the title of the purchaser from the Sheriff might be overthrown, when in the former it would be protected but no very apparent reason is perceived for such distinction and Chancellor Kent in the note already referred to says the mortgagee who has sold the title of the mortgagor, by a proceeding at law Cannot maintain an ejectment against the purchaser unless the latter knew of the existence of the mortgage and purchased subject to it.

My Opinion therefore is that this Case comes within the general rule which permits the mortgagee to sue at law upon the bond or Covenant and in this Court upon his mortgage, He in the words of the late Chancellor "sue on all his remedies at the same time though of course he can have but one satisfaction of his demand.

A Decree will be passed accordingly

August 14th 1849. John Johnson Chr

And afterwards towit on the 21st day of August 1849 the Chancellor passed his Decree in the said Cause which was duly enrolled in the words following towit:

John B Welham Adm^r of John Welhelm vs Stephen L Lee & others.

In Chancery July Term 1849.

This Case being submitted upon agreement for a final decree and being argued by the Solicitors of the parties the proceedings were read and Considered, It is thereupon this 21st day of August in the year eighteen hundred and forty nine by John Johnson Chancellor and by the authority of this Court adjudged ordered and decreed that unless the defendant Stephen L Lee shall on or before the first day of October next pay or bring into this Court to be paid unto the Complainant and to the defendant Jacob H Bird the proportions of the mortgage debt respectively due to them in the proceedings mentioned together with the Costs of this suit to be taxed by the Register the mortgaged property in the proceedings mentioned or so much thereof as may be necessary for the purpose be sold, That Brice S B Worthington and Frank H Stockell of the City of Annapolis be and they are hereby appointed Trustees to make such sale and that the Course and manner of their proceeding shall be as follows

They shall first file in the Chancery Office a bond to the State of Maryland executed by themselves with a surety or sureties to be approved by the Chancellor in the penalty of five thousand dollars conditioned for the faithful performance of the trust reposed in them by this decree or which may be reposed in them by any future order or decree in the premises, They shall then proceed to make sale of the mortgaged property having first given at least three weeks previous notices inserted in