that the Mortgagee encouraged the persons who were present at the sale to purchase by the assurance that if there was any thing objectionable in the terms they would make the terms to suit purchasers. The Notice of the sale was simple and was in fact in strict conformity with the requirements of this section, contained in the Mortgage. The objection to the employment of an agent to sell did not attract much Notice in the argument and is without sanction in reason or authority. Then as to price. The price at which the property was sold was not equal to the full and fair value of the property in good times and under advantageous circumstances. But if persons who were not present and have given more, then otherwise are conscious of failure to purchase, after due Notice of sale, cannot be held as a ground to rest upon for setting the sale aside. If persons who were present were deterred from purchasing by apprehensions of purchasing a law suit with the property, it is not with the exceptants to claim this as an objection to the sale. The testimony shows that this obstacle was interposed by themselves with the purchasers. By their agency and their threats the persons present were called upon to take Notice that the Mortgagee would put the sale in question. If the sale was below the estimate of some persons is no evidence tending to the satisfaction that this resulted from any act of the Mortgagee positive or negative. The sale was made after due Notice at the time and place Notified, after the required Notice, and with every encouragement by them with their hands given to spur. Charges the inadequacy of price is not fair to, as to vitiate the sale, and there are no circumstances of fraud or mystery by the Mortgagee to give force to the objection founded in the price. For authority on this point it is sufficient to refer to 11 Gill & John 1 Gill & Johns vs Rapp 1st Md Ch Dec 283 Hemsley vs Stone. The objection which takes them as trustees and as such not allowed by the Law to purchase at their own sale cannot apply to the Mortgagee in this case. In the contemplation of the Legislature they were not so regarded, when the proceedings are prescribed for sales by Mortgagees. In the case of resale it is provided that the Court may direct that proceedings be taken by them or may appoint a Trustee in their place 9 Sec Code Sub Title Laws Art 64. After a sale has been made the same proceeding are required to assure title to the purchaser as in cases of sale by a Trustee under a decree of a Court of Chancery jurisdiction 8 Sec Code Sub Title Laws page 446 Art. 64. That the very case is not overlooked in which the Mortgagee may become the purchaser 12 & 13 Secs Ibid. The remedy for wrong and actual fraud by the Mortgagee, is not impaired, but the Law does not impute to the sale by Vendors and purchase at their own sales, as in sales by trustees, but the only difficulty which has been in my way in regard to the case has been on the point of jurisdiction. This point has been ably and elaborately argued, after the best reflection I can give it, and some misgivings of opinion I am of constrained to overrule it. It is maintained for the exceptants that the Mortgagee have no standing in Court because there is nothing in the Law authorizing them to ask the Confirmation of their sale by the Court, that the Mortgage was made before the adoption of the Code and that the 16th section further appearance is found in the provisions of the Code, that the Act of 1856 allowed the sale by Mortgagees, but gave to Chancery the jurisdiction over their proceedings, and upon the first consideration of this

point I was inclined to sustain it. But it has been replied with some force that the exceptants, did not take Exception to the jurisdiction, when their objections were filed, but made issue which confessed the jurisdiction, Cases may be cited without number, in which this is good answer to a plea to the jurisdiction. If a party appear and plead to the merits after summons, when process has not been served the objection is waived, which would have been good in a plea to the jurisdiction. If in place of making the Motion the respondent had filed a petition impeaching the jurisdiction of the Court and asking its aid to give title to purchasers at the sale under this Mortgage, and Exhibiting in their petition the facts set forth in the Report has the Court could not have refused to accord to them a hearing. The exceptants have appeared and answered to their rights in the same manner as they would have been compelled in obedience to a summons. Yet they have sought to accomplish their end by recognizing jurisdiction and finding some reason to doubt the result, have disclaimed that jurisdiction. But the intention of the Legislature in the act of 1860 Ch 420 is not by fair construction to be confined to sales under Mortgages made in pursuance of its provisions. The terms are that in all Mortgages there may be inserted a clause authorizing the Mortgagee or other person named therein to sell the Mortgaged premises upon such terms and on such contingencies as may be expressed in the Deed 5 Sec Art 64 Code. That the subsequent sections regulate the sales and proceedings in pursuance of such authority in the Mortgage and not in pursuance of sales made under 5 Section alone, where the authority to sell existed before the act under a covenant allowed by Law. Vendors Vendees are subject to the provisions of the Code. This the authority to sell which requires the Report and with authority conferred by the 5 Sec of the Code. The Mortgage in this case has a covenant to the Mortgagees for the right to sell and having exercised the right they become obliged to report their proceedings for the benefit of the purchaser. But besides there is nothing in the exercise of the power here claimed which affects the rights of any of the parties. The right to sell was vested in the Mortgagees under the act of 1856. The remedy by the purchaser may have been at Law, in Equity which the proceeding offers a new and more speedy remedy, but the rights of the parties are not affected. And it has been the practice of the authorities quoted and of numberless others that the new remedy may be exercised in the assertion of a right existing before the remedy. And moreover in this connection it is to be noted that at the time when the right to sell accrued under the terms of this Mortgage the Code was in full operation. The deed of Mortgage was executed before its adoption but the right to sell under the covenant therein did not take effect until after the Code took Effect, so that no other proceedings but those provided in the Code could be taken under this covenant. A sale under such authority with the Mortgage requires a report of the proceedings and thereby that the Court should not disaffirm its jurisdiction. Richd B Carmichael

And afterwards to wit on the 25th day of March in the year 1863, the said Emmaline Hatband and Ellen J Hatband dissatisfied and appeal from the opinion of the Court aforesaid and filed the following paper to wit Montgomery Jump, I warrant to give me an appeal in the ratification of the sale of the farm sold by James J Heignitt against Emmaline Hatband and Ellen