was to procure a decree for the sale of the same property referred to and described in the other Bill for the purpose of paying several large Mortgage debts lien thereon to which they allege they had become entitled as equitable and necessarily to satisfy several prior Mortgage incumbrances which were made parties defendants to the said Bill by the said petitioners who proof by said incumbrances that their claims were still subsisting and fixed and bona fide in reference to which particular they were specially interested one of these prior incumbrances was created by a deed of Mortgage of part of said property from said Seth Reed to David Reed duly recorded and not released until the 11th day of October 1848 to secure the said Seths promissory Note for $1057 75 dated April 12th 1848 payable in Annuyearly thereafter and the other by a deed of Mortgage of said property from said Seth Reed to the said Price and Stedder duly recorded and not released to secure the payment of a promissory Note of $761 and further loans and advances as they might make to him not to exceed $3000 and the said Bill of the petitioner prays filed against the said Seth Reed Levi Easton William Burgess John Warner Samuel Warner Augustus M. Price Cornelius Stedder including all the parties af interested in the said property and proper to be made defendants as incumbrances or otherwise, except certain parties to whom the said David Reed had assigned the Mortgage held by him who have been since added by supplemental Bill. But though the object of the said petitioner in filing their said Bill was to obtain a decree for the sale of the said property to satisfy all the incumbrances thereon yet their rights to ask the Court to pass such decree depended upon the question whether they were really interested in the character of Equitable assignees in the said Mortgage executed to Levi Easton The Bill then evidently presented the question whether they had any standing in Court as Complainants and whether it was proper that a decree for sale should be passed In the former of these questions the prior incumbrances had no interest There can be no doubt that the prior Mortgagee David Reed or his assignee and Price and Stedder might at their option have accepted the benefit of a decree for a sale under this Bill and thus have procured the satisfaction of their claim McCormick vs Gibson 10 G & J 65 and perhaps there may be no doubt of the soundness of the practice I take under our practice in regard to the foreclosure of Mortgage by sale and considering the disposition of our Courts to avoid needless litigation and multiplicity of suits a second or subsequent Mortgagee may be filing a Bill for a sale of the Mortgaged premises and making all prior incumbrances parties defendants obtain a decree for their purpose without their consent. Wylie vs McMaster 2 Md Chan Dec 417 But it would scarcely be contended that the privilege could be claimed by subsequent Mortgagees as a matter of right in a case involving question of litigation between some of the defendants to the cause which might protract the proceedings and postpone the decree to the delay and injury of prior Mortgagees in regard to whose claims there might be no dispute In such a case it would seem that they might instead of seeking relief the character of defendants in the pending suit file a cross Bill or an original Bill of that nature, and by making the parties to the other Bill

defendants obtain immediate relief if their case entitles them to it. Price and Stedder appear to have taken this view of their rights. The Bill of these petitioners were filed on the 20th March 1857 Price and Stedder filed their on the 5th of November 1867 at which time there had been proceedings in the former case except the issuing of the process for the different defendants, and I am of the opinion that under all the circumstances of the case there was no abuse of the authority and jurisdiction of the Court perpetrated by them in thus instituting their proceedings all the persons with a few exceptions who were parties to the Price Bill filed by these petitioners were made parties to that Bill filed by Price and Stedder or became such before the decree passed upon it including David Reed the first Mortgagee who ceased to hold any of the property and those to whom his alleged the Mortgage made to him had been assigned neither of these parties has in any manner objected to the proceedings instituted by Price and Stedder all that have answered have assented to the sale under them. It would be scarcely be said that a Co-defendant who stood in relation to the other defendants, and to the Complainants might entitle himself to the character of defendant merely not of he believed that he could without may obtain more speedy and complete relief be entitled to file an original Bill against the parties, and in the absence of opposition from them properly obtain a decree giving him the desired relief. But assuming that Price and Stedder might have done this the further question presented by these petitioners Complainants with the former said, can this decree obtained in a cause to which they were not parties be enforced by a sale of the property against their consent It cannot be questioned that there was not bound by this decree or in other words that not having been made parties their rights cannot be impaired thereby Haines vs Burch 3 Johns Ch Reps 459 Deacker vs Bell 3 Md Chan Dec 23. The question in regard to their rights, as against these proceedings and in reference to the subject matter to which they relate is not free from difficulty. They insist that they are entitled to demand that this decree shall be rescinded There may be cases as I said intimated in some of the elementary treatises in which the decree may be of such a character as to affect so injuriously the rights or estate of an absent party who have been studiously omitted in the proceedings that the Court will regard it in the nature of a fraud for that reason and treat it accordingly though I have not discovered any authority distinctly warranting the intimation But there should be cases in which the decree does actually affect the interest or estate of the absent party This decree in my opinion has not that effect It leaves the rights of these petitioners altogether unimpaired Their claim to be subrogated to the rights of the Mortgagee Easton being admitted by them They are to be regarded as subsequent Mortgagees not parties to the proceedings under which a decree has been obtained by the prior Mortgagee for a sale of the Mortgaged premises, In such a case it is not necessary that the decree shall be rescinded to give subsequent Mortgagees the relief to which they are entitled. The most important relief to which such subsequent Mortgagees are entitled is the right of to redeem These petitioners retain this right unimpaired by the decree and as incident to the right the privilege of being heard in reference to the claim of the respective prior mortgagees Having commenced their proceedings first for the purpose of obtaining a decree for the sale of their Mortgaged property The rights to which they acquired