Willard having positive Notice of Ramsburghs prior Mortgage and having assented to its prior execution secured his Mortgage to be first recorded and upon the distribution of the funds arising from the sale of the Mortgaged property claimed that by virtue of the Act of Assembly of 1846 he was entitled to priority of lien for the reason that his Mortgage was first recorded. The Court say Willard not only having positive notice of Ramsburgs prior Mortgage but having assented to its prior execution was guilty of Malafides & can not claim a priority of lien but must be postponed to Ramsburgs. This is all the Court of Appeals have decided in that case suppose Ramburghs Mortgage had been as the Mortgage in this case void as against third persons for want of the affidavit required by the act of 1846 & the Court have set up that Mortgage by reason of its priority and Willards Notice of its existence, I think that the Court of appeals would have said to Mr Ramsburg though your Mortgage is good and valid against Young the Mortgagor it is void & void against Willard the subsequent Mortgagee whose Mortgage is executed in conformity with law notwithstanding his Notice of the prior execution of yours. I cannot see that the cases of Ramsburghs and Williams throws any light upon the question I am considering. It is contended that if the Court thinks itself unauthorized to grant the relief under the special prayer yet under the general prayer relief may be decreed. It is clear that the Court cannot under the general prayer grant relief which is not warranted by the allegations of the Bill that relief must the Court decree under the general prayer that would set up this void Mortgage. The Bill is for the foreclosure of Wrights Equity of redemption and a sale of the Mortgaged property, can the Court under such a Bill decree that the defendant Pearson shall pay the balance of the Mortgage debt? This would be inconsistent with the case made by the Bill and would be setting up a void instrument against a third party who the bill says should not be affected by it. I can find nothing in the Bill authorizing the Court to give relief under the general prayer and I cannot imagine any relief I could give consistently with my view of the case resting the where case as it is presented. I think the Bill cannot be sustained and must be dismissed with costs as to the defendant Pearson.

M Nelson,

Whereupon was filed in the Court here on the 18 day of March A D 1865 the prayer of the appeal following to wit.

Lycurgus M Phillips Ex of the last Will of Noah Phillips deceased vs Charles Wolfe and others	No 3131 Equity. In the Circuit Court for Frederick County in Equity.

The Clerk of Circuit Court of Frederick County. Enter prayer of appeal to the Court of Appeals.

Wm D Ross Solr for Appell Mar 18th 1865

And the said prayer of appeal being granted thereupon it was ordered by the Court here that the Record and proceedings aforesaid with all things thereunto relating be transmitted to the said Court of Appeals of the said State of Maryland and the same are transmitted to the said Court accordingly

Test Jos W Carty Clk

Complainants Costs $37.28. Defendants Costs $13.05

Costs of Record $18.83.

Maryland Frederick County set. I hereby certify that the foregoing is truly taken from the Record of proceedings of the Court for Frederick County sitting as a Court of Equity in No 3131. on the Equity Docket of said Court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court for Frederick County this 25th day of March A D 1865

Jos W L Carty Clk of the Circuit Court for Frederick County

And now comes into the Court of Appeals here as well the said L M Phillips Ex of N Phillips by William T Rap Esquire his Attorney as the said Isaac Pearson et al by W B Nelson Esq their Attorney and thereupon on motion of the said Isaac Pearson by their Attorney aforesaid it is ruled by the Court here that the said L M Phillips Ex of N Phillips assign the errors in the Record of proceedings aforesaid or in the giving the decree aforesaid as aforesaid brought before the Court of appeals here for correcting the errors supposed to be therein or decreed by the Court of appeals here will be entered against him in default thereof and the said L M Phillips Ex of Noah Phillips by his attorney aforesaid says that in the Record of proceedings aforesaid and also in the giving of Decree aforesaid there is manifest error in this to wit that by the Record aforesaid it appears that the Decree aforesaid in the first aforesaid given was given for the said Isaac Pearson et al against the said L M Phillips Ex of N Phillips whereby the Law of the Land that decree ought to have been given for the said L M Phillips Ex of N Phillips against the said Isaac Pearson et al therefore in that there is manifest error and he says that the Decree aforesaid for that error and others being in the Record of proceedings aforesaid may be reversed annulled and held entirely for nought and that he the said L M Phillips Ex of N Phillips may be restored to all things which he hath lost by occasion of the said decree and that the said Isaac Pearson et al may return to the errors aforesaid and so forth. And thereupon it is ruled by the Court of Appeals here that the said Isaac Pearson et al join in the errors by the said L M Phillips Ex of N Phillips above assigned in the Record of proceedings aforesaid or decreed by the Court of appeals here and be rendered against them in default thereof and the said Isaac Pearson et al by their Attorney aforesaid say there is no error in the Record of proceedings aforesaid nor in the giving of the decree aforesaid and they pray that the Court of appeals here will proceed to the examination as well as of the Record of Proceedings aforesaid as of the matters aforesaid by the said L M Phillips Ex of N Phillips above for error assigned and that the said decree may be in all things affirmed and so forth. Thereupon further process of and upon the premises between the parties aforesaid is by virtue of an Act of Assembly in such cases made and provided continued before the Court of appeals here until the first Monday in October next the same day is given to the said parties there then to hear the Record of the Court of appeals here of and upon the said premises and so forth;

At which said first Monday in October being the second day of the said month in the year of our Lord 1865 came again into the Court of Appeals here