

with them, are not at all applicable to the bank, and that with regard to the bank, it may be pressed with unmitigated severity. The circumstances which should expose the bank to this unfavorable discrimination in the view of a court of equity, are not apparent to me. Its claim was against Jacob Gibson, the testator, for money loaned him. Lloyd and the Edmondsons claim, by purchase, from one of the devisees of the testator, and it would be a little remarkable, if their title should be more respected than the title of the bank, claiming under the testator himself. Certainly, unless the bank has done something to forfeit the vantage ground upon which it stood, as the creditor of Jacob Gibson, its title would be stronger than the title of those who claim under him. The bank lost a part of its debt, by releasing that portion of the mortgaged premises purchased by Lloyd, from the operation of the mortgage, but this was prejudicial to no other party but itself, and is, of course, no ground of complaint against it.

But, although the bank was unquestionably entitled to have its debt paid, by a sale of the mortgaged premises, as the Court of Appeals have decided, yet, if the pretensions of the complainant are established, to the extent to which they are now advanced, nearly every thing which they have received for their debt, will be taken away. And why should this be so? because, as is argued, they purchased with full notice of the claim of the complainant. It is certainly true, that the bank did purchase with notice that it was buying, subject to the devises made to the complainant, but, that it purchased with notice, or even with the suspicion, that such a claim as is now set up, existed, it is impossible to believe. The Court of Appeals, it would seem, had, *ex industria*, omitted to define the rights of the complainant, though it asserted that she had rights, and declared the sale must be made subject to them; and it is quite probable, not to say certain, that the only rights which, it was supposed, the complainant had upon this property, at the time of the sale to the bank, was the right of habitation.

The bank purchased this property in 1839, ever since which time, as before, Fayette Gibson has lived upon and enjoyed