

such lien exists at all without first paying upon the state and condition of said Partnership accounts as they may appear upon a final settlement and therefore your respondent maintains and insists upon the propriety and justice of the order heretofore passed by your Honor in this case and which is the object of said Petitioner Sarah M. Pittburgh as distinctly avowed to proceed with a view indirectly to frustrate and prevent your Respondent from asserting his equitable and preferred lien on the Partnership assets and effects. Your Respondent further aversing and aversing that the exception taken by him in his fore said petition to the validity effect as a operation of said Mortgage Instrument and he is here that your Honor will consider the same as fully and the same case herein repeated and relied on in part to the petition of said Sarah M. Pittburgh which said petition of this respondent in this case filed by him taken as a part of the papers as if here inserted. This Respondent denies that he had any knowledge of the object and purpose of said release of 6 January 1857 further than that apparent on the face of the instrument as published to the world on the records of Frederick County and especially does your Respondent deny that there was any agreement at the time of executing said release that the Mortgage deed of the same date should be taken and considered as a continuation or substitution of the mortgage deed by unqualifiedly released and annulled by the legal force and effect of the solemn release aforesaid. And in case such alleged agreement should be established as between the said Mortgage and Mortgagee Your Respondent insists and maintains that the same is contradictory to and inconsistent with the legal operation and effect of said deed of release and even if said agreement was shown to be in writing it would be inoperative as against third parties and especially as against this party and especially as against your Respondent unless the same was duly recorded or otherwise notified at the proper time to your Respondent and he charges that no part thereof of said agreement could be admitted or proven by your Honor on the premises. Therefore insists and maintains that said deed of Mortgage of 6 Jan'y 1857 can under no circumstances be regarded as creating a lien anterior to its date. Your Respondent further states and charges that the said Mortgage instrument dated the 9th Oct'r 1856 referred to in said petition as Exhibit-4 filed with the bill of Complaint is on its face null and void and without consideration in law so far as its purpose is to indemnify Sarah M. Pittburgh who was then and there a feme covert incapable in law of binding herself as endorser maker or