

the injury which he alone may probably sustain. The creditors, or *cestuis que trust* under the deed of the 27th of April, 1810, are not parties to this decree; and, therefore, their rights cannot be bound by it; but nevertheless, if it is executed as it now stands, their interests may be greatly embarrassed, materially injured, or perhaps in some measure wholly sacrificed. If the real estate is sold under it, the parties with whom they may have to deal will be varied and multiplied; their case may be made more complex and difficult; and a sale of the personal property will be attended with at least the same consequences; and, in addition, it may be thereby removed entirely beyond their reach. Besides, this decree upon the proceedings as they now stand, would most grievously mislead a purchaser under it. He would be warranted in concluding, that the property had been discharged from the incumbrance of the deed of trust; because the *Court itself had acted upon
514 that belief, which it was authorized to educe from the answer of Mullikin and the absence of any proof to the contrary; when in fact it had not been so released and could not be protected against that incumbrance, because those creditors had not been made parties. *Finley v. Bank United States*, 11 *Wheat.* 304; *Clifton v. Haig*, 4 *Desau.* 33.

According to these views of the case, and looking to these consequences, it is perfectly evident, that this decree, if suffered to stand and be executed, may work material injury to those who ought to have been made parties to it, and who have never been called upon or heard in any way: and as to purchasers, it may operate as an instrument of deception and fraud. I feel it to be my duty, as far as practicable, to prevent any proceeding of this Court from being thus used; and not to suffer the parties by any contrivance; or by the holding back of any circumstance, either wilfully or negligently, to make any of the solemn acts of the Court operate perniciously and unjustly upon the rights and interests of innocent persons. *Gifford v. Hort*, 1 *Scho. & Lefr.* 396, 399. For these reasons therefore I shall afford the parties an opportunity of rectifying this decree; and for that purpose stay its execution until further order.

A mere bill of review would not be commensurate to the petitioner's objects; he must therefore be allowed to file such a bill as will introduce, as parties, all the creditors named in the deed of the 7th April, 1810, in such a manner as to bring their interests, in connexion with those of the present parties, fully before the Court.

Whereupon it is ordered, that all further proceedings under the decree of the second day of May, 1825, be and the same are hereby stayed and suspended until the further order of this Court. And it is further ordered, that the petitioner Benjamin Mullikin have leave to file a bill, in the nature of a bill of review, as prayed;