

plaintiff's right to such an answer as he calls for by his bill. These demurrers, it is evident, cannot be treated as disclaimers, merely because of the cause thus loosely shewn for relying on them. The case, as stated by the bill, must therefore be carefully considered to ascertain whether or not these persons have been properly made defendants; because of their having an interest in the object of the suit; or because of their being in any way liable to be called here as defendants.

All persons having an interest in the object of the suit, ought to be made parties; but it is often difficult to at once determine, who do come within this general description. Much must always depend upon the peculiar nature of the case; and how it may terminate. If the Court itself sees that a person whose interests must be involved in a decree, which it may be called on to pass, has not been made a party to the suit, it will, even at the hearing suspend its proceedings until he has been brought in as a party. And it lies upon the plaintiff to shew, that in some way in which the suit may terminate, it is necessary for his advantage or protection, that the person who he has summoned as a defendant should be made a party. *Calvert on Parties*, 10; *Lloyd v. Lander*, 5 *Mad.* 289.

These persons may have been rightfully called here as defendants on one of three grounds; either because of some beneficial interest to which they are entitled, arising out of the nature of their ancestor's contract, and the manner in which it has been partially enforced; or they may have been correctly brought here as defendants, because of their power to draw in question the title of the present claimant of this equity of redemption; and of its  
**681** therefore \*being fit and proper, for the peace of all concerned, that their power to do so should be spread upon a record to which they are parties, in order that the matter may be finally put to rest; or they may have been justly made defendants, in order to draw from them a discovery as to some particulars, material to the relief sought by the plaintiff, as to which they could not be made to speak as witnesses; because of their not being totally, and in all respects, disinterested.

As to the first ground; the present interests of these defendants. It must be recollected, that there existed, before the payment of any part of this debt, two entirely distinct interests in this land. The equity of redemption held by the mortgagor; and the legal right of the mortgagee, subject to that equity. By the sheriff's sale, as stated in the bill, the first of those interests was disposed of, and nothing more. But the proceeds of that sale, to the extent of \$68.43, have been so applied, as in part only, to extinguish the legal right of the mortgagee; and thus, a third interest has arisen out of the manner in which the two first have been dealt with. To whose benefit shall the extinguishment enure? The