

defendant's counsel in this case, the injunctions were obtained by him who was no party to the suits at law, and only went to protect particular property from the executions.

called Joseph's Gift, the conveyance to be avoided on the notes, he had or should endorse, being taken up by Howard, or on his paying to Mullikin whatever sum he might have to pay, in consequence of his indemnity. The notes were not returned by the principal debtors, and Mullikin had to pay a very considerable sum of money.

William Wilkins & Co. became the endorsers of the notes of Mullikin to a large amount; to indemnify them, Mullikin conveyed the property, the title to which he had acquired by the mortgage from Howard, subject to be defeated on Mullikin's notes, that were or should be endorsed by Wilkins & Co. being taken up by Mullikin, or on his paying to Wilkins & Co. the amount they should have paid in consequence of their endorsements. The sum of nine thousand dollars appears to have been paid by them, thereby making them the creditors of Mullikin to that extent, the payment whereof was secured by the conveyance to them of the mortgage from Howard to Mullikin.

Some time after these transfers, and long after they had been duly recorded, Mullikin obtained a judgment, in Anne Arundel County Court, against Howard for \$21,786. The judgment was entered on the 28th of October, 1823. Previous to the rendition of the judgment, Howard obtained the benefit of the insolvent laws of this State; and the judgment appears to be subject to the legal effect of the discharge. On the 16th of April, 1823, Wilkins & Co., in consideration of \$10,000, conveyed all their interest in the mortgaged premises to Thomas Cross, the complainant, which conveyance was recorded on the 21st of the same month. Subsequently to the rendition of the judgment, it was entered on the docket of the Court in which it was obtained, for the use of William Gwynn of John, one of the defendants.

George Howard, by deeds executed and recorded, has conveyed to the complainant the personal property Howard acquired since his discharge under the insolvent law. Subsequently to all the transfers a *fleri facias* issued on the judgment, which has been laid on the mortgaged premises, as well as on the personal property; and an application is made for an injunction to prevent the sale of the sheriff. No bond is filed for the prosecution of the injunction.

The first question which presents itself, is, has the complainant presented an equitable foundation for the interposition of this Court? Second, if he has, can it be obtained without an injunction bond?

It appears by an exception taken to the opinion of the Court, on the trial of the cause of *Mullikin v. Howard*, that the claim by Mullikin on Howard was not merged by the mortgage given by the latter to the former; but existed independent of the mortgage, and the right to recover by a judgment at law remained in Mullikin, no matter to whom he transferred the mortgaged premises. No doubt, if I may be permitted to express a legal opinion, in this, the Court was perfectly correct; otherwise, in the event of that property proving deficient, no redress could be had to recover the deficiency if Howard was ever able to meet it. To say the mortgage merged the claim at law would, in effect, be determining the mortgage itself a nullity; for when it was given no claim existed; the object of the deed was to secure the payment to Mullikin of whatever sum he might pay, not that he had paid: it was entirely prospective. But although the legal right remained in Mullikin to obtain a judgment for the money paid by him, it will