

settlement referred to, and unless that settlement, manifested and sanctioned by his hand and seal, can be shown by proof to have been founded upon mistake, or procured by fraud, it must conclude the antecedent transactions between the parties, and more especially those transactions upon which the settlement professes to have acted.

I think it, therefore, very clear, that so far as this defendant has attempted to remove the ground upon which this injunction rests, by attempting to show an extinguishment of the complainant's claim, he has not succeeded, but that the latter must, at least in this stage of the cause, be considered as having a title to sue upon the mortgage.

The object of this bill, as we have seen, is not only to procure a sale of the property mortgaged, for the payment of the claim of the complainant, but upon the averment of the sale of a portion thereof, and the apprehended disposition of the residue by the defendant, and the consequent diminution or destruction of the security for the debt, the court was called upon to interpose its conservative power for the protection of the rights of the complainant.

That a mortgagee, prior to the period when he may proceed to foreclose and sell the property mortgaged, may, by a bill in equity, with such averments as are contained in this bill, obtain an injunction as a preventive remedy against the apprehended danger, has been decided by the Court of Appeals. *Clagett et al. vs. Salmon*, 5 G. & J., 314. But that court has not decided, nor do I find it, so far as my examination has extended, expressly decided anywhere, that the court will put forth its authority in this way after the debt has become due, and consequently at a period when the mortgagee has a right to ask for a foreclosure and sale of the property. I do not, however, find the contrary to be decided, and it seems to me the administration of justice would be defective if the power invoked by this bill is denied the court.

If a mortgagor in possession is committing waste, equity will restrain him by injunction; though in one case, Lord Thurlow appeared to question the doctrine, upon the notion that the