

The bill then states and charges, that though the said purchase money has long since become payable, yet no part of it, nor the interest thereon, (except an interest payment to said Brown, upon said mortgage debt,) has been paid. That the said sale for the said sum of \$12,000 having been made subject to the discharge of the said mortgage out of the purchase money, and the interest on said mortgage debt having been paid up to the day of sale, it is understood, that the complainants are to receive the sum of \$4,000 with interest from the day of sale, and are, thereupon, to convey to the said Raborg and McClellan, the land subject to said mortgage claim : said Brown agreeing to accept said purchasers as debtors in place of the complainants.

The bill further states and charges, that though demand had been made for payment of said \$4,000 with interest ; yet no part of said sum had been paid, and the complainants were not only unsatisfied in that respect, but are yet, as executors, concerned in reference to said mortgage debt ; said Brown having assented to hold said executors and their testator's estate harmless from said mortgage claim ; but no formal covenant to that effect has as yet been executed.

The bill then prays, that the land may be decreed to be sold for a sum to embrace said mortgage indebtedness, and so as to be clear of said mortgage claim, and that, out of the proceeds of sale, said mortgage debt be paid and the said \$4,000 and interest, as aforesaid, and for further relief. The parties to this bill, were the said Catharine M. Raborg and Catharine M. McClellan.

These defendants having been duly summoned, but failing to appear, an interlocutory decree was passed against them, on the 28th of July, 1845, and an *ex parte* commission issued, according to the Act of Assembly. Under this commission, which was returned and filed on the 7th of August, 1845, the complainants proved the following agreement :

“We acknowledge that we became on the 8th day of July, eighteen hundred and forty-four, purchasers from Zenos Barnum and Ephraim K. Barnum, executors of David Barnum, for the price of twelve thousand dollars, payable with interest, from