

WILLIAM O. EICHELBERGER

VS.

NATHAN HARRISON.

} DECEMBER TERM, 1861.

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[ACT OF 1833, CH. 181, RELATING TO MORTGAGES, CONSTRUCTION OF, ETC.]

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THE Act of 1833, ch. 181, contemplates that the proceedings upon mortgages taken under it should be *ex parte*, until after the decree and sale, and that the propriety of the decree and the validity of the sale may be inquired into and contested after the order of ratification *nisi*, and before the final order.

The mortgagor in such a mortgage cannot, therefore, complain that he had no notice of the application for a decree; neither can he prevent the sale under the decree, upon the ground that he is entitled to credits against the debt secured by the mortgage, which credits existed, if at all, prior to and at the time of its execution.

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[The facts of this case are fully stated in the opinion of the Chancellor.]

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THE CHANCELLOR:

It is quite evident, that the proceeding upon mortgages, like the present, which was taken in conformity with the provision contained in the second section of the Act of December session, 1833, ch. 181, being "an Act relating to mortgages," was contemplated to be *ex parte*, until after the decree and the sale under the decree, and that the propriety of the decree and the validity of the sale made thereunder were to be inquired into and contested after the passage of the order of ratification *nisi*, and before the final order of confirmation should be passed.

The second section expressly provides, that when mortgages are executed in the manner therein specified, the mortgagees may at any time, after filing the same to be recorded, submit the original, or an official copy, to the Chancellor, or Baltimore County Court, or any Judge thereof, who may thereupon *forthwith* decree a sale of the mortgaged premises, and appoint a trustee to make the sale; the sale to be made at any one of the periods limited in the mortgage for the payment of the