

Several of the installments having fallen due and remaining unpaid, and the mortgage containing the assent and agreement of the mortgagors provided for in the act of 1833, ch. 181, a petition was filed in this court in July, 1848, by the mortgagees, praying that a decree might be passed for the sale of the mortgaged premises, in conformity with the provisions of that act, for the payment of the installments of the debts then due, with the interest thereon, and a decree passed accordingly on the 8th day of that month, appointing a trustee, with authority to sell in case the installments due, with the interest and costs, should not be paid by a day limited for that purpose. The day having passed, and the money not being paid, the trustee advertised the property for sale, when the present bill was exhibited by Mrs. Cronise alone, asking for and obtaining an injunction to restrain him upon the several grounds therein stated.

The first is, that at the time of executing the deed of mortgage, the complainant was under the age of twenty-one years, as was known to her husband and mother, the other mortgagors, and as she believes, to Clark & Mankin the mortgagees; and that she has never, at any time or in any manner, ratified or confirmed or acknowledged the validity thereof.

Clark & Mankin, the only defendants who have answered the bill, deny that at the date of the mortgage they had any knowledge, nor have they now, that the complainant was at that time under age, and put her to the proof of her alleged infancy. And they say, that long since the date of the mortgage, and when, the defendants believe and charge, the complainant was of full age, if, indeed, under age at the making of the mortgage, she ratified, sanctioned and confirmed the same.

It must, of course, be perfectly clear, that if Mrs. Cronise was under the age of twenty-one years when she executed this mortgage, it could not be binding upon her, and that unless she has, since she attained the legal capacity to contract, ratified her act in such a way as to give it legal efficacy against her, if it is capable of such ratification, she may now insist upon her incapacity; the petition of the mortgagees, upon