

being fit and proper, for the peace of all concerned, that their power to do so should be spread upon a record to which they are parties, in order that the matter may be finally put to rest; or they may have been justly made defendants, in order to draw from them a discovery as to some particulars, material to the relief sought by the plaintiff, as to which they could not be made to speak as witnesses; because of their not being totally, and in all respects, disinterested.

As to the first ground; the present interests of these defendants. It must be recollected, that there existed, before the payment of any part of this debt, two entirely distinct interests in this land. The equity of redemption held by the mortgagor; and the legal right of the mortgagee, subject to that equity. By the sheriff's sale, as stated in the bill, the first of those interests was disposed of, and nothing more. But the proceeds of that sale, to the extent of \$68 43, have been so applied, as in part only, to extinguish the legal right of the mortgagee; and thus, a third interest has arisen out of the manner in which the two first have been dealt with. To whose benefit shall that extinguishment enure? The purchaser with notice, as in this instance, at the sheriff's sale, bought and paid for nothing more than the naked equity of redemption; hence, it is clear, that if he were allowed to take advantage of that, as a total reduction of the incumbrance, he would derive a benefit, for which he had paid nothing, nor given any equivalent whatever, which cannot be admitted. It follows, therefore, that the mortgagor must, at the hearing, or before this case is finally disposed of, be permitted to take the place of the mortgagee to obtain reimbursement, so far as his interest, other than the mortgaged property, may have been taken and applied to the reduction and partial satisfaction of this incumbrance. How such an adjustment is to be made, need not now be determined, as it is a matter which may well be permitted to stand over for further consideration. But to the extent of the reduction of this incumbrance made by the payment of the \$68 43, raised by a sale of the mortgagor's interest, it is perfectly clear, that the mortgagor is a proper and necessary party. (c)

In regard to the second ground. The equity of redemption, and the manner in which it has been sold. In England, it has been held, that where the mortgagor has been declared a bankrupt,