

is no party to this case, there may be some doubt, whether the trustees under the decree of the 4th of May, 1830, can convey good titles to the purchasers from them. Whereupon, the plaintiffs prayed, that the *Bank* might be required to procure its trustee *Smith*, to convey the real estate so held in trust by him, to the trustees appointed by the decree in this case, in order, that they might convey good legal titles to the purchasers, &c.

3d March, 1831.—BLAND, *Chancellor*.—It is a well settled principle, in relation to creditors' bills, that where a creditor comes in after the institution of the suit, by filing the voucher of his claim or otherwise, he and all who have an interest in the claim, either as trustee, or *cestui que trust*, do thereby, to the full extent of their respective interests, as expressed by such voucher, become parties to the suit, and are bound accordingly by the decree in favour of the purchasers under it; and also as regards all others who were originally or may afterwards be considered as parties to the suit. (g) It is true, that in cases of this kind, where mortgagees, or other like incumbrancers, are not made parties, or do not come in, they are untouched by the decree; but if they once come in and consent to the sale, or claim under the decree they are bound by it. (h) But, in general, for the protection of purchasers, the surplus of the proceeds of the sale will not be paid to the mortgagor, his inheritor, or a defendant, where it is shewn, that there are outstanding incumbrancers who have not come in, or been made parties to the suit; and the sale has not been made subject to such incumbrances. (i) Hence it would be wholly unnecessary and improper to order a conveyance, as prayed by this petition.

Whereupon it is *Ordered*, that the said petition be and the same is hereby dismissed with costs.

The defendant *Christiana Mackall*, not having answered the bill filed on the 10th of February, an interlocutory decree was passed against her according to the act of Assembly; (j) and a commission was issued and returned, but without any testimony. Whereupon it was *Decreed*, on the 24th of March, 1831, that the trustees appointed by the decree of the 4th of May, 1830, make sale of the real estate, clear of all claim of this defendant *Christiana Mackall*

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(g) *Mitf. Plea.* 249; *Hammond v. Hammond*, 2 *Bland*, 349, 388.—(h) *Kenebel v. Scrafton*, 13 *Ves.* 370; *Hammond v. Hammond*, 2 *Bland*, 388.—(i) *St. Antonio v. Adderly*, 12 *Cond. Cha. Rep.* 372.—(j) 1820, ch. 161, s. 1.