appear before the commissioners, and to exhibit either their equitable titles, or to show the payments they have made. On what pretence can such plaintiffs claim the aid of a court of equity? What is a court to do, in such a state of things? Where a party asking its aid refuses to comply with the conditions on which that aid must depend, a court is certainly correct in refusing its aid, and may dismiss the bill. But in such a case, we think, it would be harsh to make the decree of dismission a bar to a future action. It is not certain, that this decree is on such a hearing as to be a bar to a future action; and this point is not positively decided. It is unnecessary to decide it, because we think the interlocutory decree was irregular, and ought not to have been made, until William Penn, a tenant in common *428] *with John Penn, was before the court. The defendants are left at liberty to proceed with their legal title, and this must be sufficient to prevent the plaintiffs from practising unnecessary delays.

For the irregularities which have been stated, we think the decree ought to be reversed, and the cause remanded, that the proper proceedings may be had therein.

DECREE.—This cause came on to be heard, on the transcript of the record, and was argued by counsel: on consideration whereof, this court is of opinion, that the parol testimony stated by the circuit court, in the interlocutory decree, to have been heard at the trial, ought to have appeared in the record, and that the interlocutory decree ought not to have been pronounced, until William Penn was before the court by his answer, or otherwise. This court is, therefore, of opinion, that the decree of the circuit court for the district of Pennsylvania, dismissing the bill of the plaintiffs, ought to be reversed, and the same is hereby reversed, and the cause is remanded, that further proceedings may be had therein, according to equity. All which is ordered and decreed accordingly.[1]

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*429] *CAMPBELL *v.* PRATT *et al.*

Explanation of the former decree of this court in the same case. (9 Cranch 500.)

APPEAL from the Circuit Court of the District of Columbia.

March 13th, 1820. This cause was argued by *Key*, for the appellant, and by *Jones*, for the respondents.

March 16th. JOHNSON, Justice, delivered the opinion of the court.—The principal question in this case is, whether the circuit court has executed the decrees formerly pronounced between these parties (9 Cranch 500), according to their true intent and meaning. Some obscurity has been thrown over the meaning of those decrees, from an obvious error in copying them into the minutes. The primary object of this court was, to give to Law the benefit of a foreclosure in all the lots included in the mortgage from Morris, Nicholson and Greenleaf, in whose right, Pratt, Francis & Company founded their claim. But being called upon by the equity of intervening interests (in creating which Law himself had had some agency), they decreed a dis-

[1] For a further decision in this case, see 4 W. C. C. 430.

tribution of the whole amount due to Law, between that class of lots, still held by the mortgagor, and that which had passed into the hands *of [*430
the present appellants. This class was again subject to another discrimination, inasmuch as thirteen of the thirty-two purchased by the appellant, were subject to a second mortgage, executed by Morris, Nicholson and Greenleaf, to one Duncanson, and the equitable interest in which was adjudged to the assignee of Greenleaf. The sum which thirty-two lots were decreed to contribute to the payment of Law, was to be determined by the ratio which these lots bore to the whole of the mortgaged premises.

It is now contended, that another distribution of the sum thus charged, is to be made between the lots thus mortgaged to Duncanson, and the remaining lots of this class. And it is ascertained, that the consequence will be, putting a considerable sum in the pocket of this appellant, to the prejudice of Duncanson's mortgage, as the sale of those thirteen lots falls considerably short of satisfying the sum decreed on that mortgage. That is, that these thirteen lots shall be charged ratably with the sum charged upon the whole class, so as to contribute to relieve the remaining lots, and by thus contributing to the satisfaction of Law's mortgage, leave the larger sum from the sale of the remaining lots to be paid over to this appellant. This, it is contended, is both conformable to the decree, and to general principles.

If conformable to the decree, it is in vain to refer to general principles. But we think, the purport of the decree is obviously otherwise. Campbell, claiming *as purchaser at sheriffs' sales, under an attachment of the [*431
interest of the mortgagors, filed his bill for a redemption of the whole of this class of lots, and the court decreed, that he be permitted to redeem, on payment, first, of the ratio of Law's mortgage, charged on this class, secondly, on payment of two-thirds of the amount of principal and interest of the debt due to Duncanson. And as the opposite claimants had filed their bill for a foreclosure, a sale is ordered of the whole of this class of lots, to raise the money, to be applied in the same manner, if Campbell should fail, in six months, to redeem. The application of the amount of sales must then be regulated by the right of redemption, as decreed to Campbell; and that is, that he pay, first, the contribution to Law, secondly, the amount due to Duncanson, upon which conditions only he could hold the lots discharged of the mortgages, and consequently, after those payments only, could he receive the balance of the money, the representative of his remaining interest in the land.

And this exposition of the decree is perfectly consonant with general principles. All the doubt in the case has been raised by the effort to exhibit this appellant as the holder of an independent interest, that is, as a third incumbrancer. But this is by no means his relative character; he is nothing more than the legal representative of the interests of Morris, Nicholson and Greenleaf, in the lots attached, and sold to him. The attachment was levied upon the equity of redemption existing in those mortgagors; *and the decision of this court, in supporting his right, was placed [*432
upon the decision of the courts of Maryland (in which the land then lay), which maintained the validity of an attachment levied upon an equity of redemption. He was, then, nothing more than the assignee of an equity of redemption, and could claim no greater equity, as against either Duncanson

or Law. That he was not to be considered as a subsequent incumbrancer, is conclusively determined by this consideration, that there would then have been no equity of redemption outstanding in any one. In the relation of the assignee of an equity of redemption, he appeared first in this court, and it is obvious from the former decree, that in that light only did this court view him. In this light, he could lay claim to no rights inconsistent with those of the creditor; and, so far as the proceeds of the 13 lots were adequate to satisfying Duncanson, he could be entitled to nothing, until that debt was paid. Any other application of the proceeds of those lots would be preferring the mortgagor to the mortgagee, or the debtor to the creditor; and confer on the assignee of the equity of redemption, a greater equity against the mortgagee, than could have been decreed to the original mortgagor.

That part of the decision of the circuit court, will, therefore, be affirmed. But of the remaining two points, it will be necessary to refer the subject, in order to have the statements and evidence in this record compared, upon which a conclusion must be formed. If this appellant has been charged
*433] with a greater amount than his just ratio of the debt due to *Law, he is entitled to relief. But the principles being established, this becomes a mere matter of numerical calculation.

Decree accordingly.

The Atalanta: Faussat, Claimant.

Prize.

A question of proprietary interest on further proof. Condemnation pronounced.

This cause was continued at February term 1818 (3 Wheat. 409), for further proof, but the further proof received at the last term being unsatisfactory, it was again continued, on account of some peculiar circumstances in the case, to the present term, when no further proof being produced, condemnation was pronounced.

Decree reversed.

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*434 *United States *v.* Lancaster.

Certificate of division.

The district judge cannot sit, in the circuit court, in a cause brought by writ of error from the district to the circuit court, and the cause cannot, in such a case, be brought from the circuit to this court, upon a certificate of a division of opinion of the judges.

This was an action of debt, originally brought in the District Court of Pennsylvania, and carried by writ of error to the Circuit Court, from which it was brought to this court, upon a case agreed by the parties, and a certificate that the opinions of the judges were opposed upon a question arising in the cause.

March 10th, 1820. The cause was argued by *C. J. Ingersoll*, for the plaintiffs, and by *Sergeant*, for the defendant.