*James Caldwell, Appellant, *v.* John Taggart and Mary, his wife, and others.

Parties in equity.

Where a bill was filed to compel the execution of securities for money loaned, which securities, it was alleged in the bill, were promised to be given upon particular real estate purchased by the money loaned, and the complainants had omitted to make the prior mortgagees of the premises on which the securities were required to be given, parties to the bill, the court said; it has been urged, in reply to those grounds of reversal for want of parties, or for want of due maturation for a final hearing, that nothing is ordered to be mortgaged or sold, besides the interest of the party who is ordered to execute the mortgage, or whose interest is to be sold, whatever that may be; but this we conceive to be an insufficient answer. It is not enough, that a court of equity causes nothing but the interest of the proper party to change owners; its decree should terminate and not instigate litigation; its sales should tempt men to sober investment, and not to wild speculation; its process should act upon known and definite interests, and not upon such as admit of no medium of estimation; it has means of reducing every right to certainty and precision; and is, therefore, bound to employ these means, in the exercise of its jurisdiction.

The general rule is, "that however numerous the persons interested in the subject of a suit, they must all be made parties, plaintiff or defendant, in order that a complete decree may be made; it being the constant aim of a court of equity to do complete justice, by embracing the whole subject; deciding upon and settling the rights of all persons interested in the subject of the suits; to make the performance of the order perfectly safe to those who have to obey it, and to prevent future litigation.

Where in the course of proceedings in a suit in chancery in the circuit court, it is apparent, that a father has not presented the interests of his children for protection, the court said; although there is no appeal taken in behalf of the children, the court, while interfering to prevent the breach of a trust in behalf of the father, can hardly be expected to pass over, without noticing, an omission in the father, amounting to a breach of trust, to the prejudice of his infant children. p. 201.

Appeal from the District Court of the Western District of Virginia. The appellees, who were citizens of Maryland, filed their bill in the court of the United States for the western district of Virginia, in which the material allegations set forth were:

That on the 22d of June 1809, Grizzle Taggart, mother of John Taggart, conveyed to William Copeland Goldsmith and James Caldwell, all her estate, for the uses and purposes *mentioned in the deed exhibited with the bill. A part of the estate so conveyed consisted of a debt [*191 due to the said Grizzle from Keller & Foreman, of Baltimore, which was secured by a mortgage on valuable real property, called the Salisbury Mills. That about the year 1817, Caldwell, who was the nephew of Grizzle, importuned her, and her son John, and his wife, to consent to permit him to receive the money due on the mortgage, and to use it in the purchase of an estate called the White Sulphur Springs, situate in Greenbrier county, Virginia, and which belonged to the heirs of Michael Bowyer; and to induce them to yield their assent, he represented that estate to be very valuable, and promised that he would incumber it (when purchased) by a mortgage to secure the money which he should receive from Keller & Foreman. The complainants further stated, that consent was accordingly yielded on the conditions proposed; in consequence of which, Caldwell (who was then sole trustee, the other being dead) received from Keller & Foreman the sum of $15,760.70, in discharge of their mortgage, which he appropriated to the purchase of several shares of the copartners of the said Michael Bowyer in

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the said estate, or paid therewith for some shares previously purchased. Some time afterwards, as the complainants further alleged, in order to satisfy Grizzle Taggart of the propriety of his purchase, and that the security promised would be ample, Caldwell brought her from her residence in Baltimore to the White Sulphur Springs. That she returned about the beginning of October 1817, well pleased with the property; that Caldwell promised to execute the mortgage immediately after her return, but that in a very short time, Grizzle departed this life, without its having been done. A few days after this event, Caldwell, secretly and unknown to the complainants, as they stated, executed a mortgage in favor of Jeremiah Sullivan and others, on his interest in the White Sulphur Springs estate, to secure the sum
*192] of $20,000. *A second mortgage, to secure the same debt, was executed by Caldwell, bearing date the 15th of September 1819, and both were duly recorded (and were in the record). It was stated, that some defect, unknown to the complainants, was supposed to exist in the mortgage of the 24th of October 1817, which was the reason for the second being executed. After the death of Grizzle Taggart, her son, John Taggart, as the complainants stated, applied to Caldwell, to execute the mortgage which he had promised on the White Sulphur Springs estate. He then informed the said John, that he had executed the mortgage of the 24th of October 1817, before mentioned, on which the said John upbraided him with his breach of trust. Caldwell then promised to extinguish the incumbrance, out of the annual profits of the estate, and to make provision for the debt created as before mentioned. Nothing however was done; the complainants being without any written evidence of their claim, until the 9th of September 1823, when Caldwell executed a paper, exhibited with the bill, acknowledging the sum of $15,260.70 to be due on account of principal, and $2900 on account of interest. The bill further stated, that the mortgagees, Jeremiah Sullivan and others, instituted a suit to foreclose the equity of redemption; but before the case was brought to a hearing, a certain Richard Singleton purchased the mortgage and obtained a transfer thereof; that to secure the money paid for the mortgage and other money advanced, he obtained a deed of trust from Caldwell on his interest in the estate, that is four-sevenths obtained by purchase, and one-seventh in right of his wife, who was a daughter of Michael Bowyer. The complainants further stated, that the profits of the said estate were great; but that such was the imprudence of Caldwell, that he had never paid any part of the principal or interest on the mortgage, either before or since Singleton acquired it; that he was incurring other large debts, and that he had no other means to pay the money due to them, except his interest in the White Sulphur Springs estate. They
*193] insisted, that they held an equitable lien on that estate, so far *as Caldwell's interest intended; and they prayed that it might be subjected to their debt; that another trustee might be appointed to execute the trust created by the deed of the 22d of June 1809, and for general relief.

To this bill, James Caldwell and his wife filed a joint answer, sworn to on the 30th of September 1827, the material statements of which were the following: He admitted the execution of the deed of the 22d of June 1809; though he stated, that he was not apprised of its existence, until after it was recorded. He admitted, that he received from Keller & Foreman the sum of $15,760.70, due to Grizzle Taggart, and embraced in the deed executed

by her ; but he alleged that he was her debtor to that amount, and that to secure the debt, he had given a deed of trust to Nicholas Brice, as trustee. That at his request, Grizzle and her son John consented to release his deed of trust, so as to enable him, Caldwell, to sell the property (Salisbury Plains) to Keller & Foreman, which was accordingly done, and he received the money. That the release exhibited with the answer was executed by Nicholas Brice, Grizzle Taggart, John Taggart and Mary his wife, when he was not present. He alleged, that Brice agreed, on his behalf, without consulting him, that the debt due from him to the said Grizzle, or a part thereof, should be vested in bank-stock, and that the agreement and instrument of writing mentioned in the release contemplated that object ; that he never executed any such writing, though he was informed, before the delivery of the release, of the proposition to invest the money due from him in bank-stock, and refused to accept it on that condition, of which the parties interested were informed ; but that the release was afterwards, by their consent, or without objection from them, delivered. That he was unwilling to accept the release, on the condition proposed, because his object in desiring it was the use of the money. He alleged, that the money which he obtained from Keller & Foreman was applied to the payment of his debts, and not to the purchase of the White Sulphur Springs, or any interest therein, or anything due therefor. *He denied, that it was his object [*194
to invest the money obtained by him in the White Sulphur Springs property ; or that he obtained the release by any such representation, or by any promise to give an incumbrance thereon. That he acquired the White Sulphur Springs property, with other funds, and never contemplated securing the debt due to Grizzle Taggart on that property ; but expected to pay it out of a large debt due to him from another person, which he failed to realize. He admitted that Grizzle Taggart visited the White Sulphur Springs ; that he returned with her in 1817 ; but denied, that she was brought there with the views mentioned in the bill. He said, he did not recollect, and had no reason to believe, that a single word passed between him and her, in relation to his giving a mortgage or other lien on that property, either during the said visit, or at any other time.

Caldwell denied that there was any stipulation between him and John Taggart and Mary his wife, or either of them, that the debt should be secured by a mortgage on the White Sulphur Springs property. He stated, that he did not recollect that the said John ever upbraided him with a breach of trust. He admitted, that he had a conversation with John, in 1819, upon the subject of his giving the mortgage to secure other persons, and that John Taggart then said, that he ought, in the first place, to have secured the debt in which he was interested. In reply to which, he stated, that he was willing to secure that debt, by a lien on the property, as soon as the other was extinguished, which he supposed he would be able to do, after the lapse of some time. Previous to this, Caldwell stated, that he has no recollection of having conversed with John Taggart on the subject of giving a lien, though the fact of his having executed the other mortgage was known to John as early as 1817. He stated, that he did not believe that John Taggart ever thought that he had deceived him. That there was no privacy in giving the mortgages of the 24th of October 1817, and 15th of September 1819, which he admitted he executed to secure the same debt. As evidence

to show that *John did not believe he had been deceived, he exhibited a letter from him, which was in the record. He admitted the execution of the paper exhibited with the complainants' bill, bearing date the 9th of September 1823; the pendency of a bill to foreclose the equity of redemption on the mortgage of the 15th of September 1819; the subsequent purchase of Richard Singleton, and the execution of a deed of trust for his benefit, as stated in the bill. James Caldwell then proceeded to state in his answer, the interest which he has in the White Sulphur Springs property. 1. That his wife was entitled to one-seventh, as one of the heirs of Michael Bowyer. 2. That she was entitled to another seventh, by virtue of a conveyance made to her by her brother, John Bowyer. 3. He claimed one-seventh, by purchase from William Bowyer, to whom he paid only $100 of the purchase-money. The contract was referred to, and filed among the papers of this court. He stated that William Bowyer was dead, having made a will, which was exhibited and copied into the record. 4. He claimed another seventh by purchase from William Bedford, who was stated to have purchased the interest of Thomas Bowyer, a son of Michael. That for this interest he stood indebted $6000, with interest, for which a deed of trust was executed on the property purchased, a copy of which was exhibited; and a suit had been brought to enforce this lien. 5. He claimed the interest of James Bowyer, another son of the said Michael. The remaining two shares, he stated, were in Frances Bedford and Elizabeth Copeland, daughters of Michael Bowyer.

Caldwell insisted, that if, contrary to his expectation, the complainants should establish a specific lien on any part of the said property, that it could only extend to such interests as he owned when such lien originated; and that it ought not to be extended to defeat the rights of others, or their equitable lien for purchase-money due to them from him; and he required that their rights should be precisely ascertained and adjusted, before any effort should be made to enforce such lien in favor of the complainants, and that partition should be made according to the rights of the parties.

*196] *Caldwell further stated, that an indenture was executed by him and his wife, and the other persons interested, by which it was agreed, that all the lands and tenements of which Michael Bowyer died seised, should be divided between the parties, by commissioners chosen for that purpose, except two hundred acres, including the White Sulphur Springs, buildings, &c., which should be held in common; that this partition had never been made. He insisted, that if the complainants should establish the lien demanded by them, that partition should be made according to said agreement, and his part in the two hundred acres first subjected. He admitted, that the White Sulphur Springs estate was valuable; but regretted that the profits were not as great as estimated by the complainants. He deemed it unnecessary and irrelevant to exhibit a schedule of his receipts and expenditures, or an account of his management and history of his domestic affairs. He stated, that he was desirous of paying all the debts which he owed, and particularly that claimed in this case, the justice of which he had never denied; that he trusted an apology would be found for not having effected that sooner, in the embarrassed situation of his affairs. Such was the condition of the White Sulphur Springs property, when he obtained possession, that he had been compelled to incur many expenditures to make

it at all productive. He had well-founded hopes, that if he was suffered to continue his exertions, in a few years, he would be able to do full justice to all the world; but that the interests of his creditors required, that he should not be destroyed by an unmerciful pressure of their demands.

Caldwell objected to the measure of relief sought by the complainants, as not being warranted by the laws of the land, the principles of equity, or the dictates of justice. So far as they set up any pretended parol agreement, he insisted, that it was within the operation of the statute of frauds and perjuries; of which he prayed the benefit, as if it had been specially pleaded. Caldwell moreover stated, that he felt it his duty to protect the trust fund committed to his care, from any appropriation not contemplated by the donor. He denied the right of the complainants to take that fund *from the control of the trustees; or to exhaust or expend the principal; and said, that the interest or profits only could be applied to the use of the *cestuis que trust.* [*197

The defendant, the wife of James Caldwell, stated, that her interests in the White Sulphur Springs property were, in some respects, different from those of her husband; and that she was advised that no agreement made by him, in which she had not concurred, in the form prescribed by law, affected her rights, derived by descent, devise or conveyance. She referred to a copy of the deed (which was not in the record) executed by her brother John Bowyer, to show that she was entitled to the sole and exclusive use and benefit of his share. As to the interest of her deceased brother, William Bowyer, she contended, that she was entitled to the same, or the purchase-money thereof, during her life, in the same exclusive and separate manner; and that after her death, the property passed to her children and nephew. She referred to the agreement between her husband and the said William Bowyer, to show that the latter had the privilege to revoke the contract, if the purchase-money should not be paid; which privilege she said passed to her by the will of the said William, which privilege she claimed to exercise, so far as the same might be necessary for her complete protection. She prayed that she might be permitted to answer separately, or that her rights might be investigated and decided, as if she had done so. She said, she had no knowledge of the justice of the debt claimed, and how it originated.

Depositions were taken in the district court, establishing certain facts which are sufficiently referred to in the opinion of this court; and when the cause came on to a hearing, the court made the following decree:

This cause came on to be heard, on the bill, answers, exhibits and examination of witnesses, and was argued by counsel: On consideration whereof, and for reasons set forth in a written opinion filed among the papers in this cause, it is adjudged, ordered and decreed, that the defendant, James Caldwell, do forthwith execute a proper deed of mortgage to Silas H. Smith, who is hereby appointed a trustee for that purpose, providing for the annual payment to *the said trustee, of the legal interest on the sum of $15,760.70, the amount of the sum withdrawn by the said defendant from the trust fund, to commence this day; to be paid by the said trustee to John Taggart, during his life; and on his death, that the principal, with any interest that may accrue after the death of the said John, to be paid to the children of said John and Mary his wife, according to the provisions of the deed executed by Grizzle Taggart, on the 22d of June 1809, and filed [*198

among the papers in this cause. And it is further adjudged, ordered and decreed, that the said defendant pay unto the plantiff, John Taggart, the sum of $7513.40, being the amount of interest now due on the said sum of $15,760.70 ; and in case the said defendant shall make default in the payment of the said sum of money, so that the same or any part thereof shall remain due and unpaid on the 5th of August next, then it shall be the duty of the marshal of this court to proceed to sell all the right, title and interest which the defendant may have in the White Sulphur Springs estate, in the county of Greenbrier, for ready money; having first advertised the time and place of sale, in some newspaper published in Richmond, Staunton and Lewisburg, for thirty days before such sale, and that he report his proceedings to this court. And it is further adjudged, ordered and decreed, that the said defendant pay unto the plaintiffs their costs expended in the prosecution of this suit. From this decree, the said James Caldwell prayed and obtained an appeal to the supreme court of the United States.

The case was argued by *Wirt*, for the appellant ; and by *Sheffy*, for the appellees.

Wirt contended, 1. That the necessary and proper parties had not been called before the district court when the decree was pronounced. 2. That as to those who had been called before the court, the cause had not been
*199] matured for a decree, when the same was pronounced. *3. That the decree is inconsistent with the relief prayed for by the bill. 4. That the decree was not justified by the evidence in the cause. 5. That even if such a decree could have been justified by the general evidence, it would only have been after the prior liens on the property had been marshalled, by the report of a master commissioner, and the remaining interest of Caldwell in the property precisely ascertained and fixed by the decree.

Sheffy, for the appellees, argued, that there is no error in the decree, injurious to the rights of the appellant.

Johnson, Justice, delivered the opinion of the court.—The material facts of this case may be thus stated : Grizzle Taggart, whishing to make provision for the family of her son John Taggart, conveyed a considerable property to one Goldsmith, and the defendant, James Caldwell, to the use of herself for life, then to the joint use of John Taggart and his wife for life, to the use of the survivor for life, and finally, to be distributed among their children. The children, together with their parents, preferred this bill. The deed bears date the 22d of June 1809, and contains a clause, empowering John and his wife, or the survivor of them, to sell and dispose of the trust property, " and invest it in other property, subject to the like uses and trusts, and to repeat the same as often as they may think beneficial for them and their children." In July 1812, Goldsmith being dead, Caldwell prevailed upon the *cestuis que trust*, Taggart and wife, to permit him to make use of a large sum of money raised upon the trust property, and secured it to them by a mortgage on the Salisbury Mills, executed to Nicholas Brice, in terms adapted to the purposes of the original trust deed. Afterwards, in the year 1816, Caldwell prevailed upon the *cestuis que trust* to make another change of application of the trust fund in his favor, by executing a release of the mortgage, to enable him, as is alleged in the bill, to make a purchase

*of the Sulphur Springs, in Virginia, and under a promise to mortgage that property when purchased, to secure the money according to the original trusts.

These facts make out the complainants' case; and excepting the three allegations, that the last loan was solicited for a specific purpose, that it was applied to that purpose, and under a promise that the property, when purchased, should be mortgaged to secure the loan according to the trusts, the answer admits the facts set out in the bill. It is then a clear case for relief; since the defendant Caldwell, uniting in himself the two characters of trustee and debtor to the trust fund, was guilty of a clear breach of trust, in availing himself of the release of 1816, without seeing the debt well secured, agreeable to the deed of 1809. He must, in any event, be decreed to substitute such security as he ought to have taken upon any other change of investment effected in pursuance of the original trust. But the complainants here go for specific relief, claiming to stand in the relation of *cestuis que trust* or mortgagees of a specified property; upon the ground, as to the first relation, of having paid the consideration-money, and as to the second, of having surrendered their existing mortgage, upon Caldwell's promise to execute that in contemplation; and in one or the other or both those rights, to have the property placed in the hands of a receiver, that the income may be applied to extinguish prior incumbrances, and leave the property free to satisfy this claim. The bill also contains the prayer for general relief, but the specific claim must first be disposed of, before the general prayer can be considered.

The court below sustained the allegations of the bill relative to the promise to mortgage the specific property, and decreed Caldwell to execute a mortgage accordingly, to secure the principle sum of $15,760. It then goes on to order the interest, calculated to the date of the decree, amounting to $7500, to be paid by a day prescribed, or in default thereof, that the property so ordered to be mortgaged to secure the principal, shall be sold to raise the interest. We think it clear, that there is an error in this, since the *interests of those in remainder would thus be sacrificed to the first taker. And although there is no appeal taken in their behalf, yet [*201 the court, while interfering to prevent the breach of a trust in behalf of the father, can hardly be expected to pass over, without noticing, an omission in the father, amounting to a breach of trust, to the prejudice of his infant children. In an instance, therefore, in which a decree so obviously needs reforming, it is without reluctance, that the court lays hold of such legal grounds for reversing it, as may be considered under the appeal taken by the defendant.

The complainants in their bill set out, that soon after receiving and using the release before mentioned, Caldwell purchased the five-sevenths of the interest in the Sulphur Springs, and shortly after mortgaged the same to Sullivan and others, to secure certain large sums which they had assumed for him; that this mortgage was foreclosed according to the laws of Virginia, and finally lifted and assigned to Mr. Richard Singleton, who advanced thereon, for the relief of Caldwell, $23,000, to secure which the latter executed a trust deed to A. Stevenson and F. Bowyer, which it appears became absolute, by failure of payment, more than a year since. And when the defendant, Caldwell, as well as Frances Bedford, come to answer to the alle-

gation of the purchaser of the property in question, we find that, although Caldwell has repeatedly executed deeds conveying or incumbering five-sevenths of the whole, he does not pretend to make title to more than one-seventh, to wit, the share of James Bowyer. The rest are either vested in his wife or his children, or incumbered with prior liens, which will probably sweep the whole.

His answer also introduces into the cause a deed of partition, or one partaking of that character, executed by the parties interested in this property, bearing date in 1810, by which a division or distribution has been agreed upon, adapted to the nature of the property, and in which every individual has so distinct an interest, that it may well be questioned, whether, until it
*202] is in some way carried into *execution, it will be possible for any purchaser to know what he is buying. This deed has not been copied into the record sent up, but it is presumed, that it could hardly have been passed over in the court below. Of the interests thus introduced into the cause by the answer, that of the children of Thomas Bowyer, as set out in Mrs. Bedford's answer, and that of the children of Mrs. Caldwell and Mrs. Copeland, as shown by the will of William Bowyer, are wholly unrepresented. And as to the interest of Mrs. Copeland or her representatives, although there was an order for a decree *nisi*, the decree nowhere appears to have been entered, nor evidence of the service or return of the rule exhibited in the record.

In reply to all these grounds of reversal, for want of parties, or for want of due maturation for a final hearing, it has been urged, that nothing is ordered to be mortgaged or sold beside Caldwell's own interest, whatever that may be. But this we conceive to be an insufficient answer. It is not enough, that a court of equity causes nothing but the interest of the proper party to change owners. Its decrees should terminate, and not instigate, litigation. Its sales should tempt men to sober investment, and not to wild speculation. Its process should act upon known and definite interests, and not upon such as admit of no medium of estimation. It has the means of reducing every right to certainty and precision, and is, therefore, bound to employ those means in the exercise of its jurisdiction.

There is no want of learning in the books, on this subject. The general rule is laid down thus: "however numerous the persons interested in the subject of a suit, they must all be made parties, plaintiffs or defendants, in order that a complete decree may be made; it being the constant aim of a court of equity to do complete justice, by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject of a suit; to make the performance of the order perfectly safe to those who have to obey it, and to prevent future litigation." And again, "all persons are to be made parties who are legally or beneficially interested in the sub-
*203] ject-matter and result of the *suit;" extending, in most cases, to heirs-at-law, trustees and executors. Thus, in a case in which a remainder-man in tail brought a bill against the tenant for life, to have the title-deeds brought into court, and there were annuitants on the reversion, and a child interested under a trust term of years, prior to the limitation to the plaintiff, that is, incumbrancers prior and posterior to the plaintiff, Lord Hardwicke, 3 Atk. 570, refused a decree, without first making them parties. So, where husband, tenant for life, remainder to his wife for life, remainder

over, brought his bill, without joining the wife ; the objection was made and sustained, on the ground, that if there was a decree against the husband, it would not bind the wife. 1 Atk. 289. So, if an under-mortgagee brings his bill to foreclose the original mortgagor, he must make the first mortgagee a party. 3 P. Wms. 643. This is the relation in which the complainants here seek to place themselves in reference to Mr. Singleton. And there are various cases in which, though the heir-at-law is not a necessary party, he is made such in practice, and the reason assigned is, to free the estate from every blame that may lessen its value at the sale. 2 Ves. 431 ; 3 P. Wms. 91 ; 3 Bro. C. C. 229, 365. And so, in cases of indefinite or blended interests, all the participators are necessary parties ; as, where a residue is devised to several, or even devised by specified shares.

It is clear, then, that this cause must go back, as well to have the necessary parties made, as to have the decree reformed and reduced to legal precision. It is true, this course might have been avoided, if this court, upon looking through the complainants' case and allowing the full benefit of everything that has been legally established, had seen that a decree might now finally be rendered against the appellant. It would then have been nugatory to send it back for parties. But such is not the conclusion to which this court has arrived ; it has already expressed the opinion, that to a certain extent, it is a very clear case for relief, and all the difficulties arise upon the nature of the *relief prayed and granted. There is no [*204 knowing what new aspect may be given to the cause, when all the necessary parties come in and answer. But as it is now presented, had the prayer for specific relief upon the Sulphur Springs been out of the cause, it would not have been sent back, without such a decree against the defendant, Caldwell, as the court below ought to have rendered.

This cause came on to be heard, on the transcript of the record from the district court of the United States for the district of West Virginia, and was argued by counsel: On consideration whereof, it is ordered and decreed by this court, that the decree of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court, for further proceedings to be had therein, according to law and justice.