The appellee, in his assignment of errors, asks to have the decree modified in various respects. He complains, that appellants are not charged with the rent of the ferry from 1843 instead of from 1845; that too small a sum, according to the evidence, was charged against them for the profits of the ferry, while they had possession; and, that they ought not to have been allowed at all for the warehouse.

According to the former decision of this Court, the appellants were only chargeable with the rents and profits of the ferry from June, 1845, and that was manifestly the proper time from which they should have been charged, because that was the time when they took possession, under their purchase, from the assignee of the mortgage, and it is only because they got possession of the ferry by virtue of their claim of title, derived from the mortgagee, that they are to be charged with the rent of the ferry at all in this suit.

It is difficult, or rather impossible, to determine from the evidence in the record, what the precise value of the ferry per annum has been since 1845. The testimony upon that point is contradictory, and some of it not very pertinent.

Upon the whole, we are not prepared to say, that the master erred in his report upon that subject.

The warehouse is shown by the evidence, to have been a judicious improvement, put upon the premises by the appellants in good faith, when they supposed that they were the owners of the land, and according to the previous decision of this Court they were properly allowed for its erection.

The decree of the Circuit Court is affirmed.

Decree affirmed.

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NATHANIEL BUCKMASTER, Appellant, *v.* SIMEON RYDER, Appellee.

APPEAL FROM MADISON.

Upon a bill to quiet title, if a decree is rendered which is binding upon a party, his assignee, who has notice of the decree, is bound by it, if the Court had authority to adjudicate. Such a decree, though erroneous, cannot be questioned collaterally.

A decree is conclusive on the parties while it remains in force, its errors can only be inquired into and corrected by a direct proceeding for that purpose.

A party assigning a judgment, is not estopped from asserting title to land, against a purchaser under the judgment, where the lien of such judgment is divested by decree, especially if there was no express or implied covenant, that the judgment was a subsisting lien.

This is a suit in chancery, wherein the said Simeon Ryder is complainant, who filed his bill against Buckmaster and others, to foreclose a mortgage assigned to him by the State Bank of Illinois; in which bill he alleges, that one Sigerson & Harrison, in August, 1840, being indebted to the Bank $4,196 00, made four notes to secure that sum, payable in two, three, four and five years from date, and gave the mortgage sued on, to the Bank to secure these notes; that Sigerson & Harrison embraced in said mortgage, a lot in Middletown, and a lot in block 1, in Alton, of which property they pretended to be seized and possessed; that in 1847, the State Bank assigned to Ryder said mortgage, and the three promissory notes first mentioned in the mortgage, excepting the lot in Middletown, from the effect of said assignment, which had been released by the Bank; that the said Buckmaster claims to have some title in the mortgaged premises, through a sale made to him on a judgment in favor of Ryder & Frost, against one John A. Halderman and Job Lawrence, obtained against them the 17th of January, 1838, in the Municipal Court of the City of Alton, and assigned by them to the said Buckmaster. The bill, *however*, charges the fact to be, that in a Chancery suit, by Sigerson & Harrison against Ryder & Frost, and others, to confirm the title of Sigerson & Harrison to the lot in block 1, in which suit, the judgment under which Buckmaster bought the property, came in question, *it being charged in said bill upon which said suit was brought, that Ryder & Frost were judgment creditors of John A. Halderman upon a judgment, obtained by them in January,* 1838, *in the Municipal Court of the city of Alton, against the said Halderman & Lawrence, for* $279 08, *besides costs; and it being averred in said bill, that Sigerson & Harrison were entitled to hold said lot, in block* 1, *as the legal and equitable owners thereof; and the prayer of said bill being, that the title to said lot in block* 1, *should be confirmed and established in Sigerson & Harrison, it was decreed at the September term of the Madison Circuit Court,* 1841, *that they were entitled to hold the same, free of all liens and encumbrances, of any of the defend-*

ants, and that the defendant should be barred of all claim upon the same, as will appear from a copy of the decree, &c. That the judgment was assigned to Buckmaster after the lien thereof was barred; that Buckmaster is preventing the tenants from paying Ryder rent, on the pretence that his claim, under the judgment, is better than the mortgage claim; and that he, Ryder, is entitled to a priority of lien over said judgment, by force of his assigned mortgage, praying, that he may have his money, due on the notes, in a strict foreclosure, and that the Master in Chancery may make a deed to complainant, &c.

On the pleadings, and on the proofs which were in the cause, a decree was entered at the March term, 1850, of the Madison Circuit Court, Underwood, Judge, presiding, which decrees, that defendants pay to S. Ryder $3,839 34, within ninety days from the date of the decree, with interest; that in default to pay, the defendants be barred, &c.; and, that all interest which Buckmaster has in the premises, by virtue of his sale on the execution, issued upon the judgment, assigned to him and Greathouse, by Ryder & Frost, and all certificates of purchase, and deed or deeds made to Buckmaster, by virtue of said sale, be cancelled and set aside, and for nothing esteemed, and that Buckmaster, and all persons claiming under him, be perpetually enjoined from proceeding under said judgment, to enforce any sale or lien against the said mortgaged premises; and, that the property, in case of non-payment of the money found due, shall be sold, &c., and deed made by the commissioner to the purchaser, &c.; and, that the cross bill of the said Buckmaster be dismissed at his cost, &c. From which decree Buckmaster appeals, &c.

WM. MARTIN, for Appellant.

The assignee of a mortgage takes the title which the mortgagee has in the mortgage; and is affected by all equities in favor of third persons. 2 Paige C. R., 206.

Sigerson & Harrison mortgaged property to the State Bank, which they bought on a junior judgment against Halderman. Therefore, the mortgage to the Bank passed to them no better title to the property mortgaged, than Sigerson & Harrison had at the date of the mortgage in August, 1840. 4 Porter, 321–29.

When the Bank mortgage was made, Ryder & Frost's judg-

ment was the oldest lien on the mortgaged property. This lien was matter of record. Hence, all persons dealing with the property, affected by the lien, were bound to take notice thereof, and especially the State Bank, who took the mortgage. The Bank, also, had notice of Buckmaster's claim.

When the State Bank took the mortgage, they obtained all the title for which they bargained; and they took all the title which Sigerson & Harrison had to the property. In the absence of fraud, then, or misrepresentation, neither Sigerson & Harrison, nor the State Bank, can apply to Chancery, to deprive third persons of older and paramount legal liens which by law have been fixed upon the mortgaged property.

The decree set up in this case to defeat Buckmaster's title, was rendered thirteen months after the property was mortgaged to the State Bank, and on a bill filed eight months after the date of said mortgage. The Bank under whom Ryder claims, was not a party to said bill, or to the decree; the Bank neither authorized the filing of the bill, nor do they claim any thing under the decree: hence the Bank is neither a party to the decree, nor are they privy to the decree, the Bank not claiming title through Sigerson & Harrison, after the rendition of this decree.

To affect Buckmaster, the bill must have been filed by the State Bank, or by some one for their benefit, wherein, such facts must appear as will show a superior equity in the State Bank over the legal lien of the oldest judgment. To overrule Ryder & Frost's judgment, the Bank must show that she contracted with Sigerson & Harrison for a better title than she obtained by the mortgage; and that Ryder & Frost, or those claiming under them, induced the Bank to make such contract.

This decree in favor of Sigerson & Harrison, can not be set up by Ryder, to defeat Buckmaster, because Ryder does not claim through them, but as assignee of the State Bank.

Ryder, having taken the consideration from Buckmaster & Greathouse, for the assigned judgment, under which he, Buckmaster, purchased, will commit a fraud on Buckmaster by defeating his sale on the oldest judgment. This a Court of Equity will not permit.

The sale by Buckmaster, overreaches the mortgaged title of the State Bank, and the Bank failing to redeem from Buckmas-

ter's sale within twelve months from its date, lost all their title to the land under their mortgage. To have given the Bank the legal title, they should have paid off the oldest judgment and tacked the sum paid to their mortgage. See 2 Cowen, 125; 11 Ills., 445.

This bill, setting up a decree to bar Buckmaster, must show by *averment that the lien of the Ryder & Frost judgment was put in issue in the case of Sigerson & Harrison against Halderman.* This not appearing, the decree should not have an influence with the Court, in deciding the rights of these parties. See Mitford's Chancery Pleading, p. 237–8; Story's Equity Pleading, §791; 2 Madd. Ch., 313–4.

To conclude parties by a decree, it must be in a suit directly between them or their privies, and upon the subject matter directly involved in the controversy. The controversy here is to foreclose a mortgage by an assignee, wherein he does not so connect himself or the mortgagee, &c., with the decree, as to authorize the Court to consider it.

To make a decree conclusive, it must appear that chancery had jurisdiction. This is done by averment. If there be no such averment the decree is a nullity. See Story's Eq. Pl., §10, §12; also, §257, §290; Andrews *v.* Fenton, 1 Arkansas, 186; Baraitt *v.* Oliver, 7 Gill & Johnson, 193, 208; 4 Scam., 333; 4 Gilman, 354.

Where judicial proceedings are brought collaterally in question, the authority of the Court whose proceedings are plead to conclude a party, may be inquired into; they may also be inquired into when relied upon by a party claiming the benefit of such proceedings. See 1 Peters U. S. R., 329, 340, 341.

A decree cannot be used in a suit in favor of new parties, unless the same decree could have been used against the new parties had it been adverse. See 2 Peters' Digest, 539, §51; Pain's Cir. Court Rep., 196; 2 Stark. on Ev., 196, title Mutuality.

DAVIS & EDWARDS, for Appellee.

TREAT, C. J. In January, 1838, Simeon Ryder and Charles L. Frost recovered a judgment against John A. Halderman and Job Lawrence, in the municipal Court of the city of Alton, for $279 08. In February, 1838, Krum, as executor of Emerson,

obtained a judgment against Halderman, in the Madison Circuit Court, for $533 48. In March, 1838, Halderman conveyed to John Sigerson, Wallace Sigerson and Enos H. Harrison, by deed of mortgage, a part of block one, and lot four in block twenty-four, in the city of Alton, to secure the payment of certain promissory notes previously made by Halderman and Lawrence. In April, 1838, Fleming and others obtained a judgment against Halderman and Lawrence, in the Municipal Court of the city of Alton, for $1,236 10; and, at the same time and before the same Court, Enos Litchfield obtained a judgment against Halderman and Lawrence, for $469 39. In July, 1838, Ryder and Frost recovered another judgment against Halderman and Lawrence, before the same Court, for $247 62. In October, 1838, Sigersons and Harrison recovered a judgment in the same Court against Halderman, for $4,624 98; and under an execution issued thereon, they became the purchasers of the mortgaged premises for $1,900, and received a sheriff's deed therefor, in October, 1840. In August, 1840, Sigersons and Harrison conveyed to the State Bank of Illinois, by deed of mortgage, with covenants of warranty, that part of block one embraced in the mortgage from Halderman, and purchased at the Sheriff's sale, to secure the payment of $4,196, within five years.

In April, 1841, Sigersons and Harrison filed a bill in Chancery, in the Madison Circuit Court, against Halderman, Ryder, Frost and the other judgment creditors of Halderman and Lawrence, in which, after setting forth at large all the foregoing proceedings, but the mortgage to the State Bank of Illinois, they proceeded to state as follows: "Your orators under this state of facts, are informed and believe, that difficulties may arise in regard to the title of your orators to the said two pieces, parcels and lots of ground, so by your orators purchased at Sheriff's sale aforesaid, which can only be remedied in a Court of equity. Your orators, therefore, believing that they are entitled to the possession and ownership of said lots or parcels of ground, free and discharged of all liens, claims, or incumbrances, which the said John A. Halderman, or either of the said judgment creditors, may claim or pretend to set up, pray of your Honor, that the said John A. Halderman, Simeon Ryder, Charles L. Frost, Thomas Fleming, Charles McIntire, Jasper Corning, Sanderson Robert, Enos Litchfield, and John M. Krum, executor of Wil-

liam S. Emerson, deceased, may be required to make full, true and perfect answers to all and singular the charges above set forth, fully and particularly, according to the best of their knowledge, information and belief, as if the same were herein again repeated, and they interrogated thereto; and that the defendants above named, and all persons claiming and to claim the said described lots or parcels of ground in said mortgage mentioned and set forth, may be barred of and from all claims of, in and to the said premises, and every part and parcel thereof, with the appurtenances; and that your orator's title to the same may be confirmed." Process was served on the defendants, and, at the September term, 1841, the bill was taken for confessed, and a decree entered, that the defendants be forever barred of all claim to the premises in controversy, and that the complainants' title thereto be fully confirmed and established.

In September, 1842, Ryder and Frost assigned the judgment first recovered against Halderman and Lawrence to Buckmaster and Greathouse; and, in November, 1844, under an execution issued thereon, Buckmaster became the purchaser of that part of block one, included in the mortgage to Sigersons and Harrison, for $550, and afterwards obtained a Sheriff's deed therefor. In May, 1847, the State Bank of Illinois assigned and transferred to Simeon Ryder the notes and mortgage executed to it by Sigersons and Harrison. Ryder had actual notice of the sale to Buckmaster, when he received the assignment of the mortgage; and Buckmaster was well aware of the decree rendered in favor of Sigersons and Harrison, when he received the assignment of the judgment.

In January, 1848, Ryder, as the assignee of the Bank, filed this bill in Chancery against Buckmaster and others, to foreclose the mortgage executed by Sigersons and Harrison. The foregoing state of facts appeared from the pleadings and proofs in the case. On the hearing, the Court made a decree, providing for the foreclosure of the mortgage, and directing, in case of default in the payment of the amount found to be due on the mortgage, that Buckmaster be enjoined from asserting any claim to the mortgaged premises, by virtue of the purchase under the assigned judgment. To reverse that decree, Buckmaster has prosecuted an appeal to this Court.

The correctness of the decision made by the Court below, must

depend upon the effect to be given to the decree rendered in 1841, in the case of Sigersons and Harrison against Halderman and others. If that decree was binding on Ryder and Frost, who were then the owners of the judgment, it must be held to have the same effect against Buckmaster, who subsequently received an assignment of the judgment, with express notice of the decree. Under such circumstances, he could succeed to no greater rights than Ryder and Frost had as judgment creditors. If the decree operated to discharge the lien of the judgment on the premises now in controversy, the lien could not be revived by a transfer of the judgment to a party fully aware of the previous proceedings. The sole purpose of that suit was to quiet and confirm the title of Sigersons and Harrison to the premises in question. It was peculiarly a matter of equitable cognizance. All of the parties interested in the property, except the State Bank of Illinois, were made defendants. The object of the proceeding was clearly set forth in the bill. The complainants claimed to hold the premises, free from all liens of the other judgment creditors of Halderman. The validity of their liens, as against the complainants, was directly drawn in question by the allegations of the bill. The defendants were fully apprised of the grounds on which the complainants relied, and were distinctly called on to meet and controvert their exclusive claim to the property. They were regularly brought before the Court, and an opportunity afforded them to set up and insist upon their rights. The Court thus acquired full jurisdiction of the subject matter of the suit, and of the persons of the parties; and it proceeded to enter a decree affirming the title of the complainants to the premises. The decree was undoubtedly erroneous as to Ryder and Frost, and, in a direct proceeding for the purpose, might have been reversed. But, it by no means follows, that it can be declared invalid in this collateral proceeding. The only inquiry now is, had the Court pronouncing the decree authority to adjudicate upon the rights of the parties in respect of the property; not whether its decision was in accordance with the principles of equity. If the Court had such authority, and proceeded to exercise it, the decree, however inequitable or erroneous, must be held binding when drawn in question collaterally. This is an inflexible rule of the law, which has been repeatedly recognized by this Court. Buckmaster *v.* Carlin, 3 Scammon, 104;

Swiggart v. Harber, 4 *ibid*, 364; Rigg v. Cook, 4 Gilman, 336; Young v. Lorain, 11 Illinois, 624.

There can be no doubt of the validity of the decree. It is conclusive on the parties, while it remains in force. Its errors can only be inquired into and corrected, in a direct proceeding instituted for the purpose. The complainants were entitled to the full benefit of the decree. The confirmation of their title inured to the benefit of the State Bank of Illinois, to which they had previously mortgaged the property with covenants of title. The proceeding was not adverse to the Bank, but in furtherance of its interests. Although the Bank was a proper party, yet the fact that it was not made one, did not defeat the jurisdiction of the Court, nor prevent the decree from inuring to its benefit. From the rendition of the decree, the Bank held the premises discharged of the liens of the judgment creditors. It transferred all of its interests to the complainant in the present suit. He thereby succeeded to all of the rights derived by Sigersons and Harrison by the purchase at the Sheriff's sale, and by the decree establishing their title under that purchase. Buckmaster acquired no title by his purchase under the judgment, because the lien of the judgment, as respects this property, was previously divested by the decree. There is no force in the position, that Ryder is estopped by the assignment of the judgment from asserting title against a purchaser under it. He did not, either expressly or by implication, covenant that the judgment was a subsisting lien on this particular property. He simply transferred whatever interest he then had as a judgment creditor. The decree already exempted this property from the operation of the judgment, but, in all other respects, it left the judgment in full force against Halderman and Lawrence.

The decree of the Circuit Court is affirmed, with costs.

Decree Affirmed.