

That it was the duty of the petitioner to have been present on the day fixed for the hearing of his first petition to take care of his rights, and having omitted this duty, he has no right now to call upon the court a second time to relieve him ; and that it would be establishing a most loose and inconvenient system of practice to grant his present application, and again open the order confirming the Auditor's report.

The court cannot revoke the order passed on the 26th of July, upon a petition not filed until the 5th of November, because the July term had then expired, and the decree of the 26th of that month must be regarded as enrolled and no longer liable to be heard upon petition.

If a decree be enrolled so that the cause cannot be reheard upon petition, there is no remedy but by a bill of review, which must be upon error appearing upon the face of the decree, or upon some new matter discovered since.

The right of a junior mortgagee to come in upon the surplus proceeds of sale when the mortgaged property has been sold under a decree of this court, to satisfy an elder mortgage, after payment of such elder mortgage is well settled.

On the 31st of January, 1851, after the second petition of K. was dismissed, the complainant in the cause, by whom the property was purchased in 1847, filed a petition, asking that the order of the 26th of July, 1849, confirming the Auditor's report, might be revoked, and the money appropriated to pay K's mortgage, upon the ground, that he, as purchaser, was entitled to have the title disincumbered, and insisting that in his character of purchaser he cannot be regarded as a party to the proceedings, and, therefore, the orders and decrees of the court therein are not binding upon him. **HELD—**

That this application is not warranted by the decision of the Court of Appeals in the case of *Glenn vs. Clapp*, 11 *Gill & Johns.*, 1, and that the petitioner being the complainant, and having had a large proportion of the purchase money applied to the payment of his own claim, he was affected with notice of the appropriation of a portion to the payment of W's judgment, and, therefore, cannot escape the consequences of his remissness in suffering upwards of three years to elapse before bringing forward his objection.

The rights of all incumbrancers, or persons having liens existing at the commencement of a suit for a foreclosure and sale, whether subsequent or prior in date to the plaintiff's mortgage, who are not made parties to the suit, cannot be impaired by the decree.

[The facts of the case are fully stated in the opinions, the first of which was delivered on the 14th of February, 1850, as follows :]

**THE CHANCELLOR :**

On the 4th of December, 1847, the Auditor made his report in this case, distributing the proceeds of sale after the payment of the trustee's commissions and expenses. *First*, To the satisfaction of the mortgage debt due the complainant. *Secondly*,