

PRACTICE IN CHANCERY.—*Continued.*

- expired, and the decree of the 26th of that month must be regarded as enrolled, and no longer liable to be heard upon petition. *Ib.*
3. 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. *Ib.*
 4. 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. *Ib.*
 5. 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 portion 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. *Ib.*
 6. 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. *Ib.*
 7. The Act of 1833, ch. 181, contemplates that the proceedings upon mortgages taken under it should be *ex parte*, until after the decree and sale, and that the propriety of the decree and the validity of the sale may be inquired into and contested after the order of ratification *nisi*, and before the final order. *Eichelberger vs. Harrison*, 39.
 8. The mortgagor in such a mortgage cannot, therefore, complain that he had no notice of the application for a decree; neither can he prevent the sale under the decree, upon the ground that he is entitled to credits against the debt secured by the mortgage, which credits existed, if at all, prior to and at the time of its execution. *Ib.*
 9. Upon a bill to foreclose a mortgage executed by husband and wife, the wife is a necessary party to the proceedings. *Johns vs. Reardon*, 57.
 10. The fact that a defendant dies, after answering, leaving minor heirs, who are then made parties to the suit, does not and cannot vary the effect of the answer, and the complainant may avail himself of it at the hearing, to the same extent as if no such death had occurred. *Robertson vs. Parks*, 65.
 11. Where a creditor's bill, besides the averments of the indebtedness of the