

the proceedings in the Chancery Court, for the sale of the deceased's real estate, but might cling to the property specifically pledged for the payment of their debt, and hold on until they were fully paid, both principal and interest." But if the court is bound under all circumstances, when the money is within its control, to clear the title, it must have power to bring in the incumbrancers, whether they are willing or not, and thus deprive them of the right to stand out, and to cling to the property, which, as has been shown, the Court of Appeals say, they are entitled to do, and thus it might happen that the court would be under an obligation to do that which it could not do, without trenching upon the recognised rights of parties, not parties to the cause when the decree passed. Chancellor Hanson, in the case of *Miller vs. Baker*, reported in 1 *Bland*, 147, in the note, admits that the vendor of the estate sold under the decree in that case, could not be compelled to receive his money, unless he exhibited his claim, or was called to answer a bill or petition for a conveyance, and of course concedes, that the court had no power by any proceeding in that case, to clear the title.

There is, moreover, another very strong objection to the prayer of this petition.

When the order of the 5th June was passed, dismissing the petition of Speed and Pennington, asking for the payment of this same judgment, out of the proceeds of the sales of the property in this case, the trustee's report of the sales had not been ratified, and of course no appropriation had been made of the purchase money.

But since then, to wit, on the 28th of the same month, the final order of ratification passed, and on the 30th July, following, the Auditor's report, appropriating the net proceeds of the sale to the payment of the claim of the mortgagee, in part, leaving still a considerable sum due him, was also ratified, and the money directed to be so applied. It was not until the 15th of January last, nearly six months after the ratification of the report of the auditor, giving this direction to the money, that the present petition was filed, which seeks, so far as the pay-