

CASES

IN THE

HIGH COURT OF CHANCERY.

JEREMIAH DUCKER,
vs.
GEORGE G. BELT.

} SEPTEMBER TERM, 1851.

[CHANCERY PRACTICE.]

THE complainant, the holder of a mortgage from the defendant, dated the 9th of August, 1842, obtained a decree upon his bill filed on the 22d of May, 1847, against the mortgagor alone for a sale of the mortgaged property, and became the purchaser thereof at the sale made on the 7th of August, 1847. The Auditor, by his report of the 4th of December, 1847, applied \$4483 85, of the proceeds to complainant's mortgage, \$1274 15 to an elder judgment against the defendant, and \$480 55 to W's judgment rendered in September, 1845, and the balance of \$319 95 to the mortgagor. This report was confirmed on the 26th of July, 1848. On the 10th of September following, K., the holder of a mortgage on the same property, dated the 23d of January, 1843, filed his petition stating the existence of his mortgage and claiming the surplus proceeds after payment of liens prior to his own, and praying that the order ratifying the Auditor's report might be rescinded. The 9th of October was fixed by order of the court for hearing this petition upon notice to the parties interested. E., the assignee of W's judgment, answered this petition, denying knowledge of the mortgage and requiring proof of the allegations thereof. The petitioner was not present on the day fixed for the hearing, no proof had been taken by him, and no excuse offered for his failure so to do. The petition was then dismissed by an order passed on the 10th of October, 1849. Afterwards on the 5th of November, 1849, K. filed a second petition, alleging that he had no notice of the answer of E. to his former petition, and, therefore, did not know what evidence he would be required to produce, and praying that he might be allowed now to produce evidence in support of his claim.

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