

sent to the sale, or claim under the decree they are bound by it. *Kenebel v. Scrafton*, 13 Ves. 370; *Hammond v. Hammond*, 2 Bland, 388. But, in general, for the protection of purchasers, the surplus of the proceeds of the sale will not be paid to the mortgagor, his inheritor, or a defendant, where it is shewn, that there are outstanding incumbrancers who have not come in, or been made parties to the suit; and the sale has not been made subject to such incumbrances. *St. Antonio v. Adderly*, 12 Cond. Cha. Rep. 372. Hence it would be wholly unnecessary and improper to order a conveyance, as prayed by this petition.

Whereupon it is ordered, that the said petition be and the same is hereby dismissed with costs.

The defendant Christiana Mackall, not having answered the bill filed on the tenth of February, an interlocutory decree was passed against her according to the Act of Assembly; 1820, ch. 161, s. 1; and a commission was issued and returned, but without any testimony. Whereupon it was decreed, on the 24th of March, 1831, that the trustees appointed by the decree of the 4th of May, 1830, make sale of the real estate, clear of all claim of this defendant

496 Christiana Mackall * for dower as widow of the late Benjamin Mackall. After which the trustees reported, that they had, on the 15th of October, 1831, sold all those parts of the real estate which had been assigned to her for her dower; which sales were finally ratified on the 20th of January, 1832.

BLAND, C., 10th November, 1831.—On motion it is ordered, that the report of the auditor, together with all the exceptions thereto; and also all the objections to the claims of the creditors, stand for hearing on the 25th day of January next; and that the parties and creditors be and they are hereby authorized to take testimony in relation to the said report and claims of creditors therein mentioned, before any justice of the peace, on giving three days notice as usual; provided, that the said testimony be taken and filed in the Chancery office, on or before the tenth day of January next. But to avoid unnecessary delay and trouble; and at the same time to ensure an effectual investigation of the merits of each subject of litigation, it is to be understood, that the notice of the taking of testimony required to be given, must be to the creditor against whose claim the testimony proposed to be taken is to be directed; and if the testimony is proposed to be taken by a creditor in support of his claim, then he must give notice to the defendants in the case or their solicitor; or to two or more creditors or their solicitors.

The auditor, on the 24th of January, 1832, made a further report, in which he says, that he had examined four additional