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 the payment of such elder mortgage is believed to be well settled. Such right appears to be recognized by the Court of Appeals in the case of *Lee* vs. *Ad'rs of Boteler & Belt*, 12 *Gill & Johns.*, 323, and as the surplus in such a case represents the equity of redemption of the mortgagor, and is the very security pledged to the second mortgagee, no good reason is seen why he may not come and take it rather than permit it to be handed over by the court to the mortgagor. This, moreover, is the precise application which the purchaser of the property might insist upon, because in case the second mortgagee, is not made a party to the bill his rights could not be bound by the decree, and he might possibly disturb the title of the purchaser by subsequent proceeding.

This is not like the case recently decided in which the petition of a party representing himself to be a junior incumbrancer, praying to be made a party to the bill by a prior mortgagee, was dismissed upon the ground that he had no right thus to interfere. Because here there has been a sale, the claim of the elder mortgagee satisfied, and a surplus remains, being the value of the equity of redemption, upon which the party having a claim to that equity must be entitled to put his hands.

But in this case, a portion of this surplus, was appropriated by the Auditor, as far back as the 4th of December, 1847, to the payment of Wilson's judgment, which Belt, the mortgagor, admitted to be due, and consented should be allowed, according to its priority. This audit was confirmed on the 26th of July, 1849, and the question now is, whether this court can or ought, under the circumstances, to rescind the order of confirmation, and direct the money to be paid to the petitioner. The order of the 10th of September, 1849, passed upon his own application, fixed the 9th of October following for the hearing of his petition. The answer of Evans was put in on the 24th of the same month of September, by which the petitioner was put to the proof of his claim, and of all the grounds upon which he rested