

clusively to the rights of the petitioner as against Wilson's judgment.

It is, thereupon, ordered, this 14th day of February, 1850, that the petition of John King, filed in this cause on the 5th day of November, 1849, be, and the same is hereby, dismissed, with costs to be taxed by the Register.

[The second opinion was delivered on the 1st of October, 1851, as follows:]

THE CHANCELLOR:

In the opinion of this court delivered on the 14th of February, 1850, the facts of the case are stated down to that period, and it, of course, is unnecessary to recapitulate them.

Upon those facts, the court come to the conclusion that it had no power to open and rescind the order of the 20th of July, 1849, upon the petition of John King, filed on the 5th of November of the same year, the object of which, was to apply a portion of the money raised by a sale of the property, in the proceedings mentioned, in a different way from the appropriation directed by that order.

The order of February, 1850, stands unreversed, no attempt having been made to bring it before a superior court for examination, and we are now engaged upon a petition filed on the 31st of January, 1851, nearly twelve months afterwards, in substantially re-trying the same question, in the same cause, because it is quite apparent if the present attempt is successful, the object proposed by the former petition will be accomplished.

The petition of November, 1849, was filed by King, the second mortgagee, claiming that the surplus proceeds of sale, after satisfying the elder mortgage, should be applied to the payment of his mortgage, in preference to a junior judgment in favor of the state, use of Samuel Wilson, to which, by the report of the Auditor and the court's order of the 26th of July, 1849, such surplus had been in part applied, and this petition, for the reasons stated in the former opinion, was dismissed.

The present petition was filed on the 31st of January, 1851,