

by the elder mortgagee, the party by whom the original bill in the cause was filed, by whom the decree was obtained, and by whom the property was purchased in August, 1847. He asks that the order of the 26th of July, 1849, confirming the report of the Auditor, and directing the application of the purchase money, may be revoked, and the money appropriated to pay the second mortgage, upon the ground that as the purchaser he is entitled to have the title disincumbered.

This application is not warranted by what was said by the Court of Appeals in the case of *Glenn vs. Clapp*, 11 *Gill & Johns.*, 1. The object here is not to rescind the sale and have the purchase money restored, upon the ground that the purchaser has been, or is exposed to be, disturbed in his possession by one having clear title to the estate, which title was entirely unknown to the purchaser at the time of the sale. He does not ask in his petition that the sale may be rescinded, nor does he say that the incumbrance which he wishes to have removed was unknown to him when he purchased, nor that his title as purchaser, has been, or is, exposed to be, disturbed by one having a clear title to the estate, nor does he say, nor could he say, that there is, or is likely to be, a total failure of consideration. All that he says is, that "to make his title as a purchaser more secure, he is entitled to have said sum" (meaning the amount applied to the payment of Wilson's judgment) "applied to the lien of King, the second mortgagee."

The case then is simply this: the present petitioner, Jeremiah Ducker, holding a mortgage executed by George Gordon Belt, dated the 9th of August, 1842, filed a bill on the 22nd of May, 1847, against the mortgagor alone, for the sale of the mortgaged premises, to pay his debt. When this bill was filed, there existed a second mortgage, that to King, dated the 23d of January, 1843, duly executed and enrolled, of which Ducker had constructive, if not actual, notice, but he did not in his bill make this second mortgagee a party. He obtained a decree, and at the sale of the property, made on the 7th of August, 1847, he became the purchaser, and the sale was duly ratified and confirmed. The Auditor, by his report, dated and