

filed on the 4th of December, 1847, made a distribution of the proceeds of the sale, by which, after appropriating \$4483 85 to the payment of the complainant's own mortgage, and \$1274 15 to the payment of an elder judgment, he applied \$480 55 to Wilson's judgment, leaving a balance of \$319 95, which was assigned to the mortgagor. This audit was ratified and confirmed on the 26th of July, 1849, being more than nineteen months afterwards, the purchaser interposing no objection, nor did he, in fact, make any objection until the 31st of January, 1851, more than three years from the filing of the Auditor's report.

The ground now taken is, that this petitioner though he was the complainant in the original bill, and though by the report of the Auditor, and the order of the court thereupon of the 26th of July, 1849, he received a large proportion of the proceeds of the sale of the mortgaged premises, he being himself the purchaser thereof, yet that inasmuch as he cannot, in his capacity of purchaser, be regarded as a party to the proceedings, the orders and decrees of the court therein, are not binding upon him. It was said by the late Chancellor in *Binney vs. Coae*, 2 *Bland*, 108, that "where the legal capacities of the parties are different, such capacities must be considered as if they were several persons." This may be so, and I have no doubt is so in many cases, in which questions arise as to whether proper parties are before the court. But the question here is not whether this petitioner was a party to the proceedings as a purchaser, but whether being a party, as the complainant, and having had a large proportion of the purchase money applied to the payment of his own claims, he is not affected with notice of the appropriation of a portion of the proceeds to the payment of Wilson's judgment. And if he had such notice, I do not see how he can escape the consequences of his remissness in suffering upwards of three years to elapse before he brings forward his objection. He insists that no harm would be done to the holder of Wilson's judgment by this, because he had no legal or equitable claim to any portion of the proceeds of the sales, and that if his application is granted, it will be