tion), to open and vacate a decree which has been enrolled, not upon the ground of surprise, because the petitioner does not allege surprise, or any fact from which surprise may be inferred, but upon the ground that until recently before he filed his petition, he was not aware that there would be a surplus, after paying the preferred claim of the complainant. The petitioner does not allege that he had no notice of the decree, or of the sale under the decree, and it is therefore fair to infer that he had such notice. He had been invited to come in under the decree, by the order of publication, but neglected to do so, simply because he thought fit to assume that there would be no surplus; and then, fifteen months after the Court had directed that surplus to be distributed among parties more attentive to their interests than himself, he asks to have the order rescinded, and the money paid to him. To grant his prayer under such circumstances, would, in the language of the Court of Appeals, in *Burch* vs. *Scott*, be establishing "a lax principle of practice, productive of the most deleterious consequences in the administration of equitable jurisprudence."

This is not an application by the purchaser to decree the money to be applied to remove incumbrances from the title, or restored to him in consequence of a defect in the title, and therefore the remarks of the Court of Appeals, in the case of *Glenn* vs. *Clapp*, 11 *G. & J.*, 1, have no application. The purchaser's title here is supposed to be good, no matter how this question may be decided. The question presented, is between the petitioner and the other creditors of Beard. The latter came in under the decree, as they were invited to do. The petitioner did not do so, but after delaying for fifteen months after the Court had adjudicated upon the subject, he comes in, and asks to have the adjudication opened and reversed. My opinion is, he comes too late, and his petition will be dismissed.

A. RANDALL, for the Petitioner.

FRANK H. STOCKETT, for the other Creditors.