only giving the money to those who are entitled to it. But how can we know that no harm will result to Wilson from this negligence. Belt, the mortgagor, is now dead, and it may very well be, if this petitioner had asserted his rights earlier, that the judgment creditor might have recovered his claim in some other way. Besides, this judgment is now held by Evans, the assignee of Wilson, and how is it possible to say to what extent his rights and remedies over against those who may be ulteriorly responsible to him, may be jeoparded by this delay. It is said, and cases have been cited in support of the position, that to a bill for a foreclosure and sale, all incumbrancers, or persons having liens, existing at the commencement of the suit, subsequent as well as prior in date to the plaintiff's mortgage, must be made parties, otherwise they will not be bound by the decree. Such was the judgment of Chancellor Kent, in the case of *Haines* vs. *Beach*, 3 *Johns. Ch. Rep.*, 459, and I presume it can scarcely be questioned, that the rights of such persons, not made parties, cannot be impaired by the decree. But that is not the question involved in this case upon this petition. The mortgagee here thought fit to file his bill without making the junior incumbrancers parties, though as to the mortgage to King, he had constructive notice by the enrollment, and then having obtained a decree, and himself become the purchaser of the property, he claims to have the surplus applied in satisfaction of King's mortgage, which King himself, by his negligence, had forfeited his title to have done. For these reasons, in addition to those stated in the opinion of February, 1840, I am of opinion the relief asked for by this petition cannot be granted.

GRAFTON L. DULANEY, for Petitioners.
J. M. CAMPBELL, for Evans and Wilson.