

sure of the facts in relation to which, being called for by the bill, ought to have been set forth by him in his answer. Before he filed his answer, it was his duty to have read and maturely considered the bill; and a very ordinary degree of care also required of him an examination of the proceedings, in which he would have found the answer of *Harwood*, in which the fact of the specified debts being then outstanding was stated and relied on as a defence, at least in preference to the claim of the plaintiff. Instead of which, this defendant *Mullikin*, with a reckless negligence, which no court of justice ought to tolerate, applied to the debtor, for whom he was surety, and to the solicitor of the plaintiff, for information; and, resting on what he thus learned, he filed an answer, carelessly drawn by the solicitor of the plaintiff, without ever having made the least inquiry in any other direction; although he had been thus amply apprised of the necessity of doing so. If the interests of this defendant alone were jeopardized; and, if no other person than himself were likely to suffer by letting this decree stand, I certainly could not open or modify it in any one single particular. He, who has been so egregiously negligent of his own rights, can have no claim to a rehearing, and a repetition of that litigation which he has so carelessly suffered to be terminated to his disadvantage. (g)

But, from the matters now disclosed, and for this purpose established, it appears, that there are other views of this case, and other consequences likely to arise from this decree as it now stands, than those which relate exclusively to the defendant *Mullikin*, and the injury which he alone may probably sustain. The creditors, or *cestui que trusts* under the deed of the 7th of April 1810, are not parties to this decree; and, therefore, their rights cannot be bound by it; but nevertheless, if it is executed as it now stands, their interests may be greatly embarrassed, materially injured, or perhaps in some measure wholly sacrificed. If the real estate is sold under it, the parties with whom they may have to deal will be varied and multiplied; their case may be made more complex and difficult; and a sale of the personal property will be attended with at least the same consequences; and, in addition, it may be thereby removed entirely beyond their reach. Besides, this decree upon the proceedings as they now stand, would most grievously mislead a purchaser under it. He would be warranted in concluding, that the property had been discharged from the incumbrance of the deed of trust; because the

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(g) *Finley v. Bank U. S.*, 11 Wheat. 304.