

the legal title to the original tracts, by virtue of a privilege incident to that title, and as immediately contiguous to those tracts; they must, therefore, pass from the vendor to the vendee as connected with, and parcel of those tracts; and consequently, these tracts are not, so far, deficient.

As to the residue, or the deficiency of twenty-two and a half acres, it is now too late to claim an allowance for them, after the whole amount of the purchase money has been voluntarily and fully paid. Under all the circumstances of this case, the vendor cannot now be called on to refund any part of the purchase money.

It appears, that the equitable interest which George Schnertzell had obtained from the holders of the legal title has been fully and entirely transferred to, and is now vested in John Hoffman, one of the plaintiffs. And the representatives of the parties to the original contract, having been all of them made parties to this suit:

Decreed, that the defendants, by a good and sufficient deed made, executed, and acknowledged according to law, transfer and \* convey unto the plaintiff, John Hoffman, his heirs and assigns, in fee simple, all those several tracts of land in the **112** proceedings mentioned, called "Fout's Delight," and "The Resurvey on Beauty," and all their interest in that other parcel of land included by a warrant of resurvey on those tracts under the name of "The Reunion." And it is further decreed, that Henry Hoffman is hereby constituted and appointed trustee, under the last will and testament of the late James Hunter; and that he, by a good and sufficient deed, executed and acknowledged according to law, convey unto the complainant, John Hoffman, all the legal title of, in and to the said tracts of land. And it is further decreed, that the defendants pay unto the complainants their costs, to be taxed by the register.

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BURCH *v.* SCOTT.

VACATING AN ENROLLED DECREE.—BILLS OF REVIEW.—CHANCERY PRACTICE.

Where a party admitted, that he had obtained a decree by default for more than was due; and did not allege, that he had since lost any of his testimony; and it appeared that the defendant had negligently omitted during a space of about five months to put in his answer; but averred by bill on oath, that he had a good and available defence on the merits; the decree was set aside, and the defendant let in to answer on payment of costs. (a)

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(a) Reversed in *Burch v. Scott*, 1 G. & J. 393, *q. v.*