

they remained as a part of the surplus of his personalty to be distributed among his next of kin; that those negroes, with their increase, had been taken out of the possession of the late administratrix, Jane Burch, by Kinsey Gittings, and held by him during his life, and after his death had passed into the possession of William Scott, "who claimed to hold them in virtue of letters of administration granted to him upon the estate of Kinsey Gittings," and he had actually sold them in October, 1818, and received payment for them, amounting, as appears by his return of the sales, to \$2,850; "which, with interest and a reasonable compensation for their services while in his possession, and in the possession of Gittings, the plaintiffs were justly entitled to demand of this defendant; that the defendant was about to distribute the money so received by him as a part of the assets of his intestate Gittings."

Upon these circumstances this suit was instituted by Thomas Burch, as administrator *de bonis non* of the late Jesse Burch, and in his own right, together with Jesse Burch, Fielder Burch, Mildred with her husband James Johnson, and Kitty with her husband John Stephens; which Thomas, Jesse, Fielder, Mildred, and Kitty, are the children, and next of kin of the late Jesse and Jane Burch, against William Scott alone. The plaintiffs prayed to have the defendant, Scott, considered as a trustee for their benefit; that a distribution of the negroes, or the proceeds of the sale, might be made among them; and that the defendant might be restrained by injunction * from parting with, or paying over the proceeds of the sale of those negroes. **114**

An injunction bond was filed; but, from its not having been, as usual, noted as approved by the Chancellor, it would seem to have been deemed unnecessary in this case. An injunction was granted, issued, and served. A subpoena was issued returnable to September Term, 1823, and returned served. The defendant not appearing, an attachment was issued returnable to December Term, 1823, and returned attached; and it was then renewed and returned attached to March Term, 1824, when the following order was passed:

JOHNSON, C., (*f*) 30th March, 1824.—In this cause the defendant being returned attached for not appearing to the bill of complaint filed by the complainants; and the said defendant not having appeared, upon motion of the complainants by their solicitor; it is this 30th day of March, 1824, ordered, that the said defendant, either in person or by his solicitor, put in a good and sufficient answer to each interrogatory contained in the bill, or a plea or

(*f*) The terms and form of this order were adjusted, by Chancellor HANSON, according to the provisions of the Act of 1799, ch. 79, s. 2; in the case of *Walsh and others v. Delassere and others*, 19th February, 1800, and it has been followed ever since.