

thereof, from the fourth day of August, 1825, until paid or brought in as aforesaid.

On the 22nd of September, 1825, the plaintiffs, by their petition, applied for a *feri facias*, which was immediately ordered and issued to the sheriff of Montgomery County, which writ was endorsed thus, "complainants' release Doll. 392.90½."

On the 15th of November, 1825, William Scott, together with Berry Gittings, Michael Gittings, Richard Gittings, Sarah Gittings, an infant by her guardian and next friend, and Jeremiah Gittings, also an infant by his guardian and next friend, filed a bill, which they style, "their supplemental bill in the nature of a bill of review," in which they recite all the proceedings in the before mentioned case.

They state and object to those proceedings and the decree thereupon, that under the commission to Smith, three witnesses were examined, who "according to the tenor of the return were no otherwise sworn, but severally and respectively to depose and testify according to the best of their knowledge and belief, and are \* not authenticated by the signature of the witnesses;"

that by the return of the commission to Magruder, it appears **116** that one witness was examined, not on oath, but on affirmation, neither the form, nor the terms of which are set forth, nor has the witness signed his deposition; that this plaintiff, William Scott, is the administrator of the late Kinsey Gittings, and the other plaintiffs are his children and next of kin, who as such are the persons really and exclusively interested in the matter in controversy, and ought to have been made parties to the suit, in which the decree of the 4th of August, 1825, was passed. Instead of which this plaintiff, William Scott, alone was made defendant and charged by the decree, in that case, in his own proper person, although he could only be held liable, if at all, as administrator of the late Kinsey Gittings, being as such no more than a trustee for his creditors and next of kin.

They further state, that, from certain judicial proceedings and other circumstances, it appeared, that this plaintiff, William Scott, was entitled to various credits, which had not been given, and an *ex parte* decree had been obtained by Thomas Burch, and others, in that case, for a sum greatly exceeding their just due, by their fraudulently concealing the proper sets off and deductions, some of which they had all along admitted, and others were clear and indisputable.

And they further state, that this plaintiff, William Scott, was frequently, and contrary to his anticipations and expectations, disappointed in having the business put in train for a decision; he at length became so anxious and uneasy on the subject, that, hearing of his counsel being in attendance at the Court of Appeals at