are exceptions. As where the trustee and *cestui que trust* were both made defendants, and the trustee would not answer, a motion to dissolve was permitted to be made on the answer of the *cestui*

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and Thomas Yates—in which it is stated, that the defendants Barry and Stewart were the assignees of the defendant Yates, a bankrupt; that as assignees they set up for sale, at public auction, a piece of land called Springfield, the title to which was represented as clear and unquestionable, and the late William Evans became the purchaser, for the sum of $29,169.82; that all these transactions took place with the knowledge and concurrence of the defendant McMechen, who held a mortgage on the land, at the time, to secure a large debt due to him; that the late William Evans was put into possession of the land; and, under an impression that the title of the vendors was good, he had paid a part of the purchase money; that it has been since ascertained, that the title is much encumbered and entirely defective, and that since the death of Evans, the assignees of the bankrupt had instituted suit, and recovered judgment against these plaintiffs for the balance of the purchase money. Whereupon the plaintiffs prayed, that the sale might be vacated, &c.; and, that they might have an injunction to stay the proceedings at law against them.

It appears, that at the time when this bill was filed, the Chancellor was absent; and, according to the long established course, under such circumstances, it was submitted to a solicitor of the Court, who was in no way concerned in the case; who declared, and endorsed it on the bill as his opinion, that it contained sufficient equity to authorize the issuing of an injunction. Upon which sanction the register issued the injunction as prayed, subject to the opinion of the Chancellor, on his return to the seat of the Court. And on the 7th of September, 1809, the solicitor's order for the injunction was confirmed by the Chancellor himself.

On the 5th of December, 1809, the defendant McMechen put in his answer, in which he admits the sale as stated; but denies, in general terms, the alleged defects in the title; and then sets forth various particulars, not responsive to the bill, going to shew, as he avers, that the vendors had a good and valid title; that he alone, from the peculiar nature of the case, was interested in having the injunction speedily dissolved, &c. Upon the filing of his answer, and before the other defendants had answered, he entered upon the docket and gave notice of a motion to dissolve the injunction.

On the 20th of February, 1810, the other defendants put in their answers separately, in which they admit, that the sale was made as stated by the plaintiffs; but deny that there was any misrepresentation, or defect of title. After which, the motion to dissolve the injunction was brought on to be heard, on the notice which had been given immediately after filing the answer of the defendant McMechen.

KILTY, C., 7th March, 1810.—Before the expiration of the time limited by the order, passed on the first or second day of the term for the dissolution of the injunction *nisi*, the counsel for the complainants shewed cause to the contrary, which was noted on the docket. It was objected, on their part, that the notice of motion to dissolve was entered on the answer of the defendant McMechen only; and, that the answers of the other defendants were afterwards put in without a repetition of the notice. The Chancellor considers, that, according to the rules and practice of the Court, the defendants are not entitled to a hearing of their motion at this term. It is there; upon continued till the next term, to be then heard; but it will be in the