

*que trust* alone; and indeed where there appeared to have been fraud and collusion, the *cestui que trust*, although not a party to

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power of the defendants, if they think proper, to give notice also of the motion to be then made.

The defendants then gave notice of a motion to dissolve the injunction at the next term, when it was regularly brought before the Court.

KILTY, C., 9th July, 1810.—The motion for dissolving the injunction in this case, came on to be argued according to the notice given, since which the bill, answer, and exhibits, have been considered.

The ground of the complainants' bill was, that a good title could not be made to the land purchased by the testator, William Evans, from Barry and Stewart, the assignee of Yates. It is alleged therein, that at the time of the said sale, and before, it was publicly stated by Yates, the acting auctioneer, that the title was unquestionable. This fact is not expressly denied, either by the answer of Yates, who is made a defendant, or of McMechen, who is principally interested in the suit; although they allege, that they allege, that the right of the assignee, and of the mortgagee, was all that was sold. But the equity of the complainants does not rest on that fact alone; as the question of the title is proper to be considered without any such express statement or assurance respecting it. Although it was contended in the argument, that the right only being sold, the purchaser was bound to take it at his risk. This position cannot be admitted, except in cases where the title was expressly stated, or known to be doubtful, and a reduced price was given accordingly.

It does not appear, from the several answers, that there is such a clear title to the land as those who claim under the purchaser ought to have before the money is paid. The legal title set up being only as to a part, and the equitable one being somewhat uncertain. The defendant McMechen states, that he believes Yates had a good and valid title to the land called Springfield, and that he bought the greater part from the Baltimore Company, the deeds for which are regularly acknowledged and recorded; and the equitable title to a part derived from James McFadon is also set forth. The defendant Yates refers, likewise, to the Baltimore records. But it cannot be expected, that the injunction of this Court should be dissolved upon the strength of the titles thus set out, and not answering the interrogatories in the bill.

The conduct and expression of Evans, in his life-time, are relied on to prove his assent to the purchase, after the doubts as to the title were known. But the answer of the assignees shews only, that, although he was advised to the contrary, he was determined to abide by the contract, by paying for that part to which a good title could be given; and that he wished to receive a good title for the whole. And the directions in his will do not prove his consent to take the whole as it stood. Considering that the equity, on which the injunction was granted, still subsists, to wit, the uncertainty of obtaining a valid title after the payment of the purchase money; and its application to the claim against the land.

It is ordered that the said injunction be continued till the final hearing, or further order.

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Without any further proceedings being had in this case, it appears to have been some time afterwards dismissed by the plaintiffs.