

failure of the defendants to pay the purchase money, the land should be sold. (*m*)

This bill was filed on the 29th of November, 1821, by Janet Lingan, William B. Randolph and Sarah his wife, George Lingan, and Elias B. Caldwell and Anne his wife, against Richard Henderson, Sarah Henderson, Janet L. Henderson, and David English and Lydia his wife.

The bill states, that James M. Lingan, in May, 1807, by deed, duly recorded, conveyed to John Henderson, his brother-in-law, a **237** *parcel of land lying in Montgomery County, being about four hundred and twenty acres; that some time after John Henderson executed and delivered to James M. Lingan a written paper, which is in these words "Received of James M. Lingan a deed for four hundred and twenty acres of land lying in Montgomery County, which is to be accounted for by me, John Henderson—June 10th, 1807." Which paper, as the complainants are advised, is an acknowledgment that no purchase money was paid at the time for the land, and that it was an engagement to pay the purchase money for the same if there was a sale, or if not, to re-convey it. The bill further states, that the plaintiffs have reason to believe, that a sale was made, that the price to be paid for the land was about thirteen dollars thirty-three and a third cents per acre, without interest till the expiration of twelve months after the day of sale; but of this, or of the terms of the contract, if any, the plaintiffs have not been able to discover any positive proof; but that if there was no sale, there could be no consideration for the deed, and the bargainee held the same in trust and for the use of the bargainor and his heirs. That James M. Lingan and John Henderson lived several years after the deed was executed, and Henderson retained the possession and took the profits of the land; and the plaintiffs believe it will be in their power to prove, that Henderson acknowledged, several years after the execution of the deed, that he had not paid for the land; that he was not able to pay for it; and insisted, that James M. Lingan was, by the contract, to take it back in case he, Henderson, was unable to pay for it. The bill further states, that some years afterwards John Henderson departed this life intestate, without having paid any part of the purchase money for the land; that

(*m*) This decree was reversed by the Court of Appeals, at June Term, 1830, no opinion being filed. In *McCormick v. Gibson*, 3 G. & J. 19, the Court said that the bill in the case in the text "presented no case warranting relief but by a decree for the reconveyance of the land by the heirs of Henderson; or payment of the purchase money by the administratrix. To neither of which remedies did the complainants show themselves entitled upon the proof. The Court of Appeals, therefore, could not have done otherwise than as they did, reverse the decree and dismiss the bill."