

ing to the parties the effect of what was originally sworn with the explanation of the supplemental answer. *Curling v. Tocnshend*, 19 Ves. 630; *Livesey v. Wilson*, 1 Ves. & Bea. 149; *Strange v. Collins*, 2 Ves. & Bea. 163; *Edwards v. McLeary*, 2 Ves. & Bea. 256.

After which, the plaintiff put in his general replication, commissions were issued, and testimony taken and returned.

BLAND, C., 2nd October, 1826.—This case standing ready for hearing, the counsel on both sides were fully heard, and the proceedings read and considered. It very satisfactorily appears, from the proofs, that the contracts relied on by the plaintiff in his bill, were deliberately and fairly made, and entered into in all respects whatever. And it also appears, that the plaintiff is now fully able to convey to the representatives of the late Gilbert Murdock, Senior, a good and sufficient title to the property sold to him according to the terms of the contract between them.

With regard to the allegation of the defendant, that the plaintiff had previously brought another suit for the same cause, which suit was then depending, it will be sufficient to observe, that on adverting to the bill referred to, which was filed on the 15th of January, 1825, it appears upon the face of it, that it can only be considered as an injunction bill to stay waste; the prayer for a sale being utterly incompatible with its statement, must, necessarily, be considered as mere surplusage. And, rejecting the prayer for a sale, it cannot, in anyway whatever, be considered as a bill for a sale, or to foreclose a mortgage, which is the sole object of this suit. *There is not, therefore, now, nor has there been at **464** any time depending in this Court, as is alleged, two suits between these parties having the same object.

Whereupon, it is decreed, that Elizabeth Murdock, administratrix of Gilbert Murdock, deceased, pay to the plaintiff the sum of \$500, with interest thereon from the 27th of February, 1824, until paid, and the costs of this suit on or before the second day of November next. And that on the said mortgage debt and costs being paid, the plaintiff convey to the defendant all the term of years yet to come in the lots in the proceedings mentioned. And on the defendant failing to pay, as ordered, then the mortgaged property to be sold for ready money, &c., &c.

From this decree the defendant appealed, and on the 25th of June, 1828, it was affirmed, with costs.

The trustee made sale of a part of the mortgaged property, as directed by the decree, and reported that he had sold the leasehold lot to the plaintiff, on the 31st of July, 1828, for the sum of \$20, which sale was finally ratified. The purchaser, William Brewer, then filed his petition, praying that the trustee might be