

mentioned case of Mitchell against Mitchell in the High Court of Chancery, in pursuance of the decree in that case, and of the written authority of the 29th of April, 1812; that the plaintiff Freeborn, under a belief that the land so purchased by him, did contain the number of acres as stated, gave his bond, with the plaintiff *William, as his surety for the purchase money; upon which bond, after it became due, the defendant Wallace, brought **592** suit and obtained judgment, from which these plaintiffs appealed, and the judgment was affirmed by the Court of Appeals, at June Term, 1817. That the plaintiff Freeborn, had paid to this defendant, the trustee, on the 18th of January, 1818, \$900, in part satisfaction of the judgment. The bill then further stated, that this plaintiff Freeborn, was not put into possession of the land so purchased by him until the month of November next after the day of sale; that the tract had been found to contain only one hundred and twenty-six acres, three-quarters and twenty-four perches; and therefore, he claims an allowance for deficiency; that the heirs of William Mitchell, deceased, had by a deed dated on the 14th of September, 1815, sold and conveyed a part of this very land to Carvill Cooley, and Charles Cooley, who had taken possession accordingly; that a suit in Chancery had been instituted by Samuel Gover, who claimed by a title paramount, against the heirs of William Mitchell, deceased, for the recovery of this land; and that an action of ejectment was about to be brought by one Philip Gover, for the recovery of the same land, &c. Whereupon the bill prayed for an injunction to stay execution upon the said judgment. And an injunction was granted accordingly, as prayed.

To this bill, the defendant Wallace, answered, and admitted the proceedings in the High Court of Chancery as stated; and said, that he had only sold to the plaintiff Freeborn, the interest which the heirs of James Mitchell and William Mitchell, had in the land; and that he did not pretend to warrant the title; that the plaintiff Freeborn, was put into possession soon after he gave bond for the purchase money; that at the time of sale, a plot of the land was exhibited, and the sale was made near the land, which was shewn to the plaintiff Freeborn, so that he could not have been mistaken with regard to it; that this trustee did not sell to the plaintiff Freeborn, any land claimed by the Cooleys; and that the plaintiff Freeborn, was told of, and had full knowledge of the claim of the Govers, on the day of the sale.

These plaintiffs, by a supplemental bill, filed on the 17th of August, 1824, stated, that Robert Gover had obtained judgment against them, and turned them out of possession of the land purchased by the plaintiff Freeborn. In answer to which, the defendant Wallace, alleged, that the said judgment had been obtained entirely by the negligence and default of the plaintiffs.

* After which, Kent Mitchell, who, although not so expressly stated, appears to have been one of the heirs of **593**