

William Mitchell, deceased, by his petition, not on oath, stated, that he was very much interested in the sum of money which was the subject of controversy; a large proportion of which was to be paid to him, when collected, by the said Wallace, who was a mere trustee; and therefore, prayed to be allowed to come in, answer, &c. Upon which, it was, on the 20th of August, 1824, by ARCHER, C. J. Ordered, that the petitioner be permitted to appear, answer, and defend, as prayed. Under this leave, on the 25th of October, 1824, Kent Mitchell filed his answer, in which he set forth and relied upon various facts and circumstances, which had been before in substance stated and relied on by the defendant Wallace. After which, this defendant Kent Mitchell, without oath, or stating any reasons, merely prayed for leave to amend his answer. Upon which it was, on the 6th of November, 1824, by ARCHER, C. J. Ordered, that leave be given to amend the answer, as prayed. Under which leave, this defendant, on the 5th of March, 1825, put in an amended answer, setting forth some few additional facts, but none having any material bearing upon the questions afterwards submitted for determination.

The second of the cases of Brown against Wallace, was also commenced in Harford County Court, by a bill filed on the 5th of March, 1825, by Freeborn Brown and William Brown, against James Wallace. This bill stated the same facts and circumstances as in the first bill, and alleged, that the trustee Wallace, was wholly unable to make a good valid title to Freeborn Brown, for the land so purchased by him. Whereupon it was prayed, that the said contract between the plaintiffs and the defendant, respecting the property in the proceedings mentioned, might be set aside, vacated, cancelled, &c. To this second bill, the defendant Wallace, put in an answer, substantially similar to that which he had made to the first bill.

After hearing the motion to dissolve the injunction, the matter was considered, and the motion was overruled. On the 13th of March, 1826, Freeborn Brown's death was suggested; and Mary B. Brown, his executrix and devisee, was admitted as a plaintiff in his stead. These cases were then removed to this Court, under the Act of 1824, ch. 196, and the proceedings all filed here on the 8th of May, 1827. After which, on application, a survey was ordered, made, and plots returned; testimony was taken and  
**594** \* brought in; and some other proceedings were had; any particular account of which is, however, deemed unnecessary. Upon all which, these several cases were together brought before the Court.

BLAND, C., 5th July, 1830.—The parties having agreed, that these two cases should be heard together and consolidated; and there being a convenience in having them so associated; and as it