

estate of Scotton, it is necessary to see the other transfers; and if Hogan's title is the eldest, yet a title to it may have been acquired by possession; for as it is laid down as a part of the land sold, it is to be presumed Scotton was in possession at the time of his death.

Where a tract of land is sold, and it turns out to be materially variant from the representation, the contract may be set aside. Where a tract is sold as containing a given quantity of acres, when it is discovered that less is included than was conceived at the time of the sale, a deduction will be made, unless the deficiency shall be such as would have prevented the contract, if known at the time of the purchase; that is, the deficiency appearing to be in that part which was the chief inducement to the purchase. But in this case, in every respect, the petitioner has failed to support his allegations. He has not proved that the trustee represented to him that he sold a piece of woodland as part of Duvall's Delight, which is included in the lines of neighboring tracts. He has laid down no interfering tract whatever; nor if the right of the trustee to sell three roods did not exist, and it could not exist unless it was * owned by Scotton at the time of his death, has he proved that those roods of land were the inducement **634** to the purchase. The sale made by the trustee is therefore ratified and confirmed, and the petition dismissed with costs.

From this order Anderson appealed; and no objection being made, the Court of Appeals, on the 16th of July, 1825, affirmed the Chancellor's order.

After which, the trustee Foulke, by his petition, on affirmation filed on the 12th of January, 1826, stated, that he had served a copy of the decision of the Court of Appeals on Anderson, and had demanded of him payment, and that he should complete his purchase, which he had refused to do. Whereupon the trustee prayed for an attachment.

Upon which, on the next day, an attachment was ordered as prayed, returnable to the first day of March Term then next. The writ was issued accordingly, and Anderson having been brought before the Court under it, the trustee prayed that he might be committed.

But Anderson had previously, on the 16th of March, 1826, put in his answer on oath, in which he alleged that it did not appear, by the trustee's report, that he, Anderson, was the purchaser of the land; that in consequence of the irregularity of the proceedings, a good title could not be conveyed to him by the trustee; that he, Anderson, had not been put into possession of the land, and he believed that the trustee could not give him the possession, the land being in the occupation of a certain Joseph Marriott; that a copy of the decretal order of the Court of Appeals had not been