when responsive to the averments of the bill, shall be taken as true, unless discredited by two witnesses, or one witness with pregnant circumstances, is not subject to the modification which the introduction of such a principle would involve. The rule rests upon a principle which protects it from the modification insisted upon, and that is, that the complainant, by addressing himself to the conscience of the defendant, makes him a witness, and must take his answer as true, unless he can overcome it in the way suggested.

Finding, then, that the allegations of the bill were denied by the answer, I looked carefully into the evidence taken under the order of the court, to see how far the complainants had been successful in proving their case; and without here analyzing the evidence, or going into a detailed examination of it, I deem it sufficient to say, that I do not think it sufficient to overcome the denials of the answer. Several of the witnesses, it is admitted, are incompetent, and their depositions are excluded from the inquiry. My attention has been directed to the competent proof, and that, I think, is insufficient. The motion for a receiver must be refused, and the injunction dissolved.

[No appeal was taken from this order.]

LEVI L. TAYMON
vs.
JOHN MITCHELL ET AL. } DECEMBER TERM, 1849.

[WARRANTY—JURISDICTION.]

THOUGH the seller of a chattel of which he has the possession, warrants the title, he is not bound to answer for the quality, unless he expressly warrants the goods to be sound and good, or unless he makes a fraudulent misrepresentation, or uses some fraudulent concealment concerning them, which amounts to a warranty in law.

An assertion respecting an article, must be positive and unequivocal, and one on which the buyer places reliance, in order to amount to a warranty. And if the vendee has an opportunity of examining the article, the vendor is not