

and proofs of the embarrassed pecuniary condition of the vendee, showing the vendors to be without adequate remedy at law.

The contract of sale bears date on the 8th of October, 1847. The property sold is described as a tract of land called "Mother's Care," containing one hundred and seventy-three acres, "more or less;" of which possession was to be given on the first day of January, 1848, and for which the purchaser agreed to pay the gross sum of \$2300. Of this sum \$500 were to be paid on the day possession was to be delivered, and the residue in periodical instalments, of which, one for \$600 had become due and remained unpaid when the bill was filed.

After the decree, and after the trustee appointed to make the sale, had advertised the property, to wit, on the 3d of July last, the vendee filed his petition in this court, in which, after offering some excuse for not making his defence at the proper time, he alleges, that while the negotiation for the purchase was going on, and at the time of the contract, the vendors represented that the number of acres specified in the contract was shown to be the true number by an old plat, but that subsequently, and after the first payment had been made and possession delivered, the vendors caused a survey of the land to be made, by which it appeared that it only contained one hundred and forty-five acres, one rood and thirty-four perches.

Upon this statement, the petitioner prayed that the trustee might be prohibited from selling, the decree vacated, and the petitioner allowed to file his answer to the bill, or that if the decree should not be vacated, it should only be allowed to stand as a security for the performance by the petitioner of his contract of purchase, after making such deductions from the purchase money as he might appear to be entitled to.

The court upon this petition, ordered the sale to be suspended, and that the matter thereof stand for hearing, on a day limited, with the usual direction for serving notice on the opposite party, and with the further direction, that the instalment of the purchase money then due should be brought into court.

The party who made the contract of sale, for himself and the other vendors, has answered the petition, and he being the