

the judgment, except that for \$400 on the 29th of April, 1844, and for the alleged deficiency in the number of acres.

The agreement referred to in the bill bound the defendant, Chaney, to pay to Smith, "such sum or sums of money that might arise out of land sold him, where peaceable possession could not be given, the said, with interest, to be deducted from his bond of \$3,407 87, bearing date the 1st of January, 1841."

The deed from Chaney and his wife, which was executed on the 7th of May, 1841, conveyed to the complainant, Smith, for the consideration mentioned, being \$8,184 37, the parcel of land spoken of in the bill describing it by metes and bounds, course and distance, and as containing 181 and  $\frac{7}{8}$  acres, more or less. The deed conveys the land in fee, but contains no covenants of any description.

Upon this bill and the exhibits, the late Chancellor ordered an injunction.

The answer avers that all the land sold was the property of the defendant at the time of the sale, and in his possession, and that no other person had any title to any part thereof, or had made any claim thereto, or had possession thereof. The answer also speaks of an agreement to have the land surveyed, and a survey in pursuance of such agreement, in the winter or spring of 1841, when it was found to contain the number of acres mentioned in the deed filed with the bill. That the complainants were shown the lines of the land, and it was well understood that the land was sold according to those lines by which it was described in the deed, and in conformity with which the defendant had held, and the complainant then held, possession, and if he is not now in possession of all the land it is because he has allowed others to encroach upon his just title and the possession he received from the defendant. The institution of the suit at law and the recovery of the judgment are admitted, as is also the right of the complainants to the credit endorsed upon the judgment, and also to be credited with the sum of \$400 paid on the 29th of April, 1844. Their right, however, to any credit on account of deficiency in the number of acres is disputed, and that is the only question now to be decided.