trustee and *cestui que trust* were both made defendants, and the trustee would not answer, a motion to dissolve was permitted to be

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which he admits the sale as stated; but denies, in general terms, the alleged defects in the title; and then sets forth various particulars, not responsive to the bill, going to shew, as he avers, that the vendors had a good and valid title; that he alone, from the peculiar nature of the case, was interested in having the injunction speedily dissolved, &c. Upon the filing of his answer, and before the other defendants had answered, he entered upon the docket and gave notice of a motion to dissolve the injunction.

On the 20th of February, 1810, the other defendants put in their answers separately, in which they admit, that the sale was made as stated by the plaintiffs; but deny that there was any misrepresentation, or defect of title. After which, the motion to dissolve the injunction was brought on to be heard, on the notice which had been given immediately after filing the answer of the defendant McMechen.

7th March, 1810.—KILTY, *Chancellor*.—Before the expiration of the time limited by the order, passed on the first or second day of the term for the dissolution of the injunction *nisi*, the counsel for the complainants shewed cause to the contrary, which was noted on the docket. It was objected, on their part, that the notice of motion to dissolve was entered on the answer of the defendant McMechen only; and, that the answers of the other defendants were afterwards put in without a repetition of the notice. The Chancellor considers, that, according to the rules and practice of the court, the defendants are not entitled to a hearing of their motion at this term. It is thereupon continued till the next term, to be then heard; but it will be in the power of the defendants, if they think proper, to give notice also of the motion to be then made.

The defendants then gave notice of a motion to dissolve the injunction at the next term, when it was regularly brought before the court.

9th July, 1810.—KILTY, *Chancellor*.—The motion for dissolving the injunction in this case, came on to be argued according to the notice given, since which the bill, answer, and exhibits, have been considered.

The ground of the complainants' bill was, that a good title could not be made to the land purchased by the testator, William Evans, from Barry and Stewart, the assignees of Yates. It is alleged therein, that at the time of the said sale, and before, it was publicly stated by Yates, the acting auctioneer, that the title was unquestionable. This fact is not expressly denied, either by the answer of Yates, who is made a defendant, or of McMechen, who is principally interested in the suit; although they allege, that the right of the assignee, and of the mortgagee, was all that was sold. But the equity of the complainants does not rest on that fact alone; as the question of the title is proper to be considered without any such express statement or assurance respecting it. Although it was contended in the argument, that the right only being sold, the purchaser was bound to take it at his risk. This position cannot be admitted, except in cases where the title was expressly stated, or known to be doubtful, and a reduced price was given accordingly.

It does not appear, from the several answers, that there is such a clear title to the land as those who claim under the purchaser ought to have before the money is paid. The legal title set up being only as to a part, and the equitable one being somewhat uncertain. The defendant McMechen states, that he believes Yates had a good and valid title to the land called Springfield, and that he bought the greater part from the Baltimore Company, the deeds for which are regularly acknowledged and recorded; and the equitable title to a part derived from James McFadon is also set forth. The defendant Yates refers, likewise, to the Baltimore records. But it cannot be expected,