

one an equal moiety of the sum of \$4,641 21, with legal interest on \$1,501 20, part thereof, from this day until paid or brought in, together with all the costs of this suit incurred by each of the said complainants : and, that on the defendant's failing to pay or bring into court the said sum of money with interest and costs as aforesaid, the property in the proceedings mentioned be sold for the payment thereof; that *Augustus E. Addison* be and he is hereby appointed the trustee, &c. &c.

In pursuance of this decree the land was sold, and the sale having been finally ratified, on the 30th June 1829, the proceeds were paid to the plaintiff *Moreton*, to whom they were shewn to belong exclusively, in consequence of the other plaintiff *Pattison* having received satisfaction to an equal amount.

HODGES v. MULLIKIN.

On an application for leave to file a bill of review on the ground of newly discovered matter; whether it is in truth newly discovered or not, is a question, which must be then traversed and finally determined, so as not to leave it open upon the bill of review itself.

A co-defendant, as to whom a decree is not asked to be opened, or cannot be opened, is a competent witness as to any fact upon which another defendant prays to have the decree opened.

A trustee, whose liability cannot be altered by the opening of a decree, is, upon that question, a competent witness for either party.

An attorney whose client is not a party, to object or consent to his examination, cannot be permitted to speak of any facts which came to his knowledge as such.

If the new matter actually came to the knowledge of the party, or might have been known to him, by reasonably active diligence, so long before the decree as to have enabled him to have had the matter put upon the record at the hearing, no bill of review will be allowed.

Although the party, applying for a re-hearing, may himself have no merits, yet if he shews, that the interests of innocent third persons, or those for whom he is trustee may be injuriously affected, the re-hearing will be granted.

The lien of the State commences with the institution of the suit, and therefore it should be distinctly shewn.

This bill was filed on the 15th June 1822, by *Benjamin Hodges* against *Thomas Harwood* of *Ben.* and *Benjamin Mullikin*; and it alleges, that the defendant *Harwood* had, by a deed bearing date