

he, *Harwood*, on the 11th of September 1810, by a deed legally executed, mortgaged the same property to *Hodges* for the debt due to him. But as this mortgage recites the deed of trust, *Hodges* could only take subject to the prior lien created by that deed.

On this state of things, *Hodges* filed his bill, on the 15th of June 1822, against *Thomas Harwood*, and *Benjamin Mullikin*, as the surviving trustee, to have the property sold for the satisfaction of the debt for which it had been mortgaged; by his bill, he makes an exhibit of the deed of trust as well as the mortgage, and states, that *Benjamin Harwood* was dead; in consequence of which the trust had survived to the defendant *Mullikin*. This suit, thus instituted, was marked on the docket for the use of *Wilson & Sons*. *Harwood*, in his answer, filed on the 12th of December 1822, states, that the debts specified in the deed of trust were still unpaid, and insists that a decree in favour of *Hodges* cannot be passed; on the ground, that those creditors have a prior lien, and should be made parties. But *Mullikin*, in his answer, filed on the 14th of July 1823, merely says, that he has sustained no injury; has no claim to the property mentioned in the deed of trust; and submits to such decree as may be deemed just. To these answers a general replication having been filed, a commission was issued, which having been returned without collecting any proofs, the case was submitted on the notes of the solicitor for the plaintiff, and on the notes of the solicitor for the defendant *Harwood*. Upon which, on the 2d of May 1825, a decree was passed, that unless the defendant *Harwood* paid the mortgage debt and costs on or before the 2d of June, then next, the property should be sold. It does not appear, that the mortgage debt has been paid, or that any sale has been made under the decree.

On the 25th of August last the defendant *Mullikin* filed his petition, on oath, in which he sets forth particularly the course he had pursued, and how far he was uninformed; and concludes by averring, in general terms, that he acted throughout in ignorance of his legal rights and duties; in ignorance of the facts; and was misled and deceived by his co-defendant *Harwood*; by the gross neglect of the specified creditors to notify him of their claims; and by the omission of the plaintiff's solicitor, *Nicholas Brewer*, to inform him of the answer of the defendant *Harwood*, and the matters therein stated. Upon which the petitioner asked