

not materially bearing upon the question to be decided, the case appears to be this :

The defendant *Thomas Harwood* had conveyed his property to secure the payment of his debts to the extent, and in the manner set forth by his two deeds of the 7th of April and 11th September 1810. After which the plaintiff *Hodges* filed his bill as mortgagee to obtain the benefit of the deed of the 11th of September ; setting forth the deed of the 7th of April, and making this petitioner *Mullikin*, the surviving trustee under that deed, a defendant along with *Thomas Harwood*. Which bill *Harwood* answered, acknowledging, that he had executed those deeds, and that he had not then paid the debts secured by either of them. On *Mullikin's* being served with a *subpœna* to answer, he at once apprehended, that it had relation to his situation as trustee under the deed of the 7th of April ; and, therefore, he called on *T. Harwood* for information respecting the situation of the debts specified in that deed ; and was told, that they were very stale ; that more than twelve years had elapsed since they became due ; and that he, *Mullikin*, could have no claim under the trust deed. But *Harwood* did not inform *Mullikin*, that suits had been brought, and judgments obtained against himself, and the late *Benjamin Harwood* before his death, by some of those creditors. *Mullikin* appears to have had the credulity to be thus turned aside by *T. Harwood* from making any further inquiry ; and to have been induced to believe, that he might consider himself as completely exonerated, and as having no claim whatever upon the property mentioned in that deed. After which *Mullikin*, accompanied by *T. Harwood*, called on *Nicholas Brewer*, the plaintiff's solicitor, for the express purpose of obtaining information respecting the suit, so that he might put in his answer ; and, from the conversation which then passed, it appears, that the impression was again renewed upon the mind of *Mullikin*, that, as he had not been, so he could not be injured ; and therefore had no claim whatever upon the property mentioned in the deed of trust. And accordingly he answered to that effect, without then having before him, or ever having read either the bill, or the answer of *T. Harwood*, as is evident from his, *Mullikin's*, making a mistake in his answer, as to the names of the parties to the bill. After thus answering, it appears, that *Mullikin* rested satisfied, and had no further information respecting the matter until a short time before the filing of his petition in the month of August last. On the second of May 1825 a decree was passed, grounded