

was an infant, in respect of the real estate descended, the parol demurred; or, in other words, the further prosecution of the suit

of course, to the collection of the money due on the sales which have been made. As to that part of the petition which is for a further sale, there might be sufficient evidence among the papers to justify an original order or decree for such further sale. But, inasmuch as by the order of the late Chancellor, of the 20th November, 1804, the sale therein mentioned was postponed till further order, and was not delayed solely by the appeal, it appears proper that the parties should be heard in support of and against the petition for the said postponement, by Hollingsworth and wife, of the 19th of November, 1804. The present petition for a further sale, will, therefore, be heard, on application, on the first day of the ensuing February term: *Provided* a copy thereof, and of this order, be served on the said Jesse Hollingsworth, or either of his counsel, appearing in the suit, before the first day of February next.

On the 29th of January, 1808, Elisha Tyson, John Heslip and others, by their petition, stated that they had each of them purchased a part of the real estate in the proceedings mentioned, the title to which had been drawn in question by the bill filed on the first February, 1805, by Hollingsworth and wife; that they had purchased upon a representation, and in confidence, that they should obtain a good title, which could not have been made to them until after the deed had been made good by the act of 1807, ch. 52; that if they had had possession, and had improved the same before that time, they must have done so at their own risk; in consequence of which, they had not taken possession of, or improved, the property so purchased by them, or derived any benefit therefrom; but that they were then willing to keep it; provided they were not compelled to pay interest on the purchase money, which the trustee threatened to make them pay. Whereupon they prayed relief, &c.

30th January, 1808.—KILTY, Chancellor.—The Chancellor cannot decide a matter which may be so important as to the principle and the amount on the petition as it stands. There must be either a petition or a bill, making the creditors, who were complainants in the suit, parties, as well as the trustee.

On the 2d of March, 1808, the auditor made a report, in which he says that he had stated an account between the estate of Parkin & McKenna and the trustee; that he had charged the said estate, with the amount of claims in account No. 1, including interest to the 15th of May, 1804, the time when the said sales were made, and interest on the aggregate then due to this day, and the trustee's commission; and that he had credited the estate with the amount of sales to this day, as directed by the trustee; and there appears to be the sum of \$3,871 deficient in discharging the said debts from the sales of the real estate, besides the payment of the costs arising in this court, as per account No. 2 more fully appears. He further says that he had stated another account between the said estate and the trustee, charging the said estate with the amount of claims, as stated to the 15th of May, 1804, and interest on the principal sums then due on each claim, to this day, and the trustee's commission; and credited the amount of sales and interest as aforesaid; and there is a deficiency, by this mode of statement, of \$2,287 99, as per account No. 5 more fully appears. The auditor further says that he had examined the accounts produced by the defendant Carey, the executor of McKenna; and stated an account between the said executor and the estate of Parkin & McKenna, to shew the assets which came to his hands; and there appears a balance of \$4,491 83 in his hands, of the personal estate; for which sum there has been no order of the Orphans Court for the application thereof, as per account No. 6 more fully appears. That of the said executor's accounts No. A.