

*William*, as his surety for the purchase money; upon which bond, after it became due, the defendant *Wallace*, brought suit and obtained judgment, from which these plaintiffs appealed, and the judgment was affirmed by the Court of Appeals, at June term, 1817. That the plaintiff *Freeborn*, had paid to this defendant, the trustee, on the 18th of January, 1818, \$900, in part satisfaction of the judgment. The bill then further stated, that this plaintiff *Freeborn*, was not put into possession of the land so purchased by him until the month of November next after the day of sale; that the tract had been found to contain only one hundred and twenty-six acres, three-quarters and twenty-four perches; and therefore, he claims an allowance for deficiency; that the heirs of *William Mitchell*, deceased, had by a deed dated on the 14th of September, 1815, sold and conveyed a part of this very land to *Carvill Cooley*, and *Charles Cooley*, who had taken possession accordingly; that a suit in chancery had been instituted by *Samuel Gover*, who claimed by a title paramount, against the heirs of *William Mitchell*, deceased, for the recovery of this land; and that an action of ejectment was about to be brought by one *Philip Gover*, for the recovery of the same land, &c. Whereupon the bill prayed for an injunction to stay execution upon the said judgment. And an injunction was granted accordingly, as prayed.

To this bill, the defendant *Wallace*, answered, and admitted the proceedings in the High Court of Chancery as stated; and said, that he had only sold to the plaintiff *Freeborn*, the interest which the heirs of *James Mitchell* and *William Mitchell*, had in the land; and that he did not pretend to warrant the title; that the plaintiff *Freeborn*, was put into possession soon after he gave bond for the purchase money; that at the time of sale, a plot of the land was exhibited, and the sale was made near the land, which was shewn to the plaintiff *Freeborn*, so that he could not have been mistaken with regard to it; that this trustee did not sell to the plaintiff *Freeborn*, any land claimed by the *Cooleys*; and that the plaintiff *Freeborn*, was told of, and had full knowledge of the claim of the *Govers*, on the day of the sale.

These plaintiffs, by a supplemental bill, filed on the 17th of August, 1824, stated, that *Robert Gover* had obtained judgment against them, and turned them out of possession of the land purchased by the plaintiff *Freeborn*. In answer to which, the defendant *Wallace*, alleged, that the said judgment had been obtained entirely by the negligence and default of the plaintiffs.