

## ANDREWS v. SCOTTON.

The surveyor of the county may be ordered to survey the lands in controversy ; to take the depositions of witnesses ; and to return plots.—Locations made under an order of survey, which are not counter-located, are admitted.—The mode of selling land under a decree ; in such sales the court is the vendor, and retains a lien to secure the payment of the purchase money ; and if the purchaser fails to pay, he may be proceeded against summarily ; be sued upon his bond ; and the land may be re-sold at his risk ; but the sale, as reported, must be first ratified, and the purchaser must have been after that, first called on by an order to pay or shew cause.—With the consent of all concerned, the sale may be at once confirmed.—The grounds upon which a sale may be rejected, or set aside.—The court sells nothing more than the interest of the parties to the suit ; and therefore the purchaser can call for no inquiry into the validity of the title.—The surveyor's fees are a part of the costs ; but if he fails to have them taxed and included in the decree, as affirmed by the Court of Appeals, this court can give no relief.—A party brought before the court, under an attachment to enforce the payment of money, on producing his release under the insolvent law, may be discharged.—A party may sue on all his securities at the same time, except where the bringing of suit on one of them amounts to an abandonment of his rights to have recourse to the others.—A mortgagee cannot sue upon the bond for his debt, and also have a *foreclosure* of his mortgage.—In a suit to foreclose or sell, if, by a sale, the whole debt should not be paid, the court cannot pass a decree for the payment of the balance.—An appeal bond, on the decree being affirmed, becomes thereby an additional security for the debt.—No such practice prevails, or can be allowed here, as that of opening the biddings, as in England.—Commissions adjusted and allowed as between a former and a present trustee.

THIS bill was filed on the 26th of February, 1822, by *George Andrews* and *Ennion Williams*, against *Ann Scotton*, *Robert E. Scotton*, *Alice Ann Scotton*, *Stephen Scotton*, and *Ashur Foulke*. The bill states, that in the year 1819, the plaintiff *Andrews*, for the sum of \$2,100, had purchased of the plaintiff *Williams* part of a tract of land called *Duvall's Delight*, containing one hundred and forty acres ; that *Andrews* had paid the whole amount of the purchase money ; but had not obtained a conveyance from *Williams* of the legal title ; who, however, was willing and ready to convey it as *Andrews* should direct ; that soon after *Andrews* made this purchase, he sold and contracted, in consideration of the sum of \$2,100, to convey the same land to *Stephen Scotton* ; who had made several partial payments at different times, leaving a balance of \$916, with interest from the date of the payments, still due and unpaid ; that the purchaser, *Stephen Scotton*, had since died intestate, leaving a widow, the defendant *Ann*, and three infant children, the defendants *Robert*, *Alice*, and *Stephen* ; and that letters of administration had been granted on his personal estate to the