

## BLAKENEY vs. FERGUSON ET AL.

Upon petition for an injunction to restrain proceedings at law, affecting real estate, until a decision upon a bill in equity for title to such real estate, if the bill, upon demurrer, be insufficient to sustain a decree, it is error to perpetuate the injunction.

The decision of this court in the case of *Blakeney vs. Ferguson et al.*, 3 Eng. 273, concurred in.

*Appeal from Pulaski Circuit Court in Chancery.*

S. H. HEMPSTEAD, for the appellant.

L. R. LINCOLN and P. JORDAN, contra.

SCOTT, J. The object of this proceeding by petition was to

enjoin Blakeney—pending a bill in equity filed by Mary Ferguson et al., against the heirs of Gray, (in which Ben Blakeney was also a defendant,)—from proceeding with a writ of possession, in his favor, issued from the circuit court of Pulaski county, designed to place Blakeney in possession of the land, the legal title to which was sought through the bill in equity. That bill in equity is set out *in haec verba* in this petition, and forms its *gravamen*. The injunction was granted according to the prayer of the petition. To the petition, Blakeney demurred; the demurrer being overruled by the court below, and he declining to plead or answer, but electing to stand on his demurrer, the court perpetuated the injunction with costs: from which action of the court below Blakeney appealed to this court.

That the circuit court erred in overruling the demurrer, we have no doubt. The bill in equity, set out *in haec verba* in this proceeding, and which forms its *gravamen*, was before this court in the case of *Blakeney vs. Ferguson et al.*, 3 Eng. 273, and was adjudged insufficient to resist a demurrer that was interposed to its action. With that decision we are not dissatisfied, and, as a necessary result, the doings of the court below in this case must be overturned. Decree reversed.

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