

N<sup>o</sup>. 2023. Equity

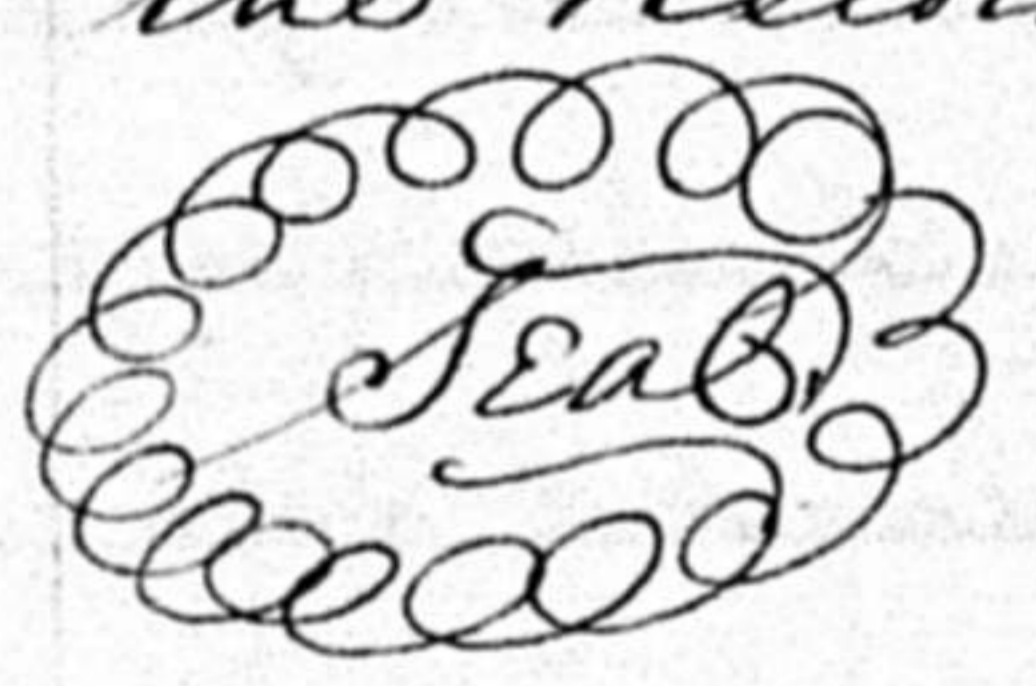
Supplemental Record from Liber. W.B. T. N<sup>o</sup>. 4. folio 187. &c. files. 10. January 1853. and is in the words, & figures following. viz.

John Eyles, and John Matthews. } In the Court of Appeals of Maryland. This cause standing ready for hearing, the Bill, answers, evidence, and all other proceedings, were read, and duly considered - The Court being Frederick Crabbs. } of the opinion, that the substantial merits of the Cause would not be determined, by reversing, or affirming the Decree of the County Court, and that the purposes of Justice would not be advanced by permitting further proceedings in the Cause. It was thereupon, this 23<sup>d</sup> day of November in the year A.D. eighteen Hundred, and Fifty two, by the Court of Appeals of Maryland and by the authority thereof, ordered, adjudged, and decreed, - That the Cause be sent to the Circuit Court for Frederick County, sitting in Equity - That such proceedings, may be had therein, by amendment of pleadings, or introduction of further testimony, or otherwise, as shall, or may be necessary for determining the Cause on its merits, and as if this appeal had not been taken, and the Decree appealed from had not been passed, and it is further ordered, and decreed that the Costs, abide the final Decision in the Cause.

John Carroll LeGrand  
John D. Eccleston  
Will<sup>m</sup> H. Tucker.  
Jno Thomson Mason.

Maryland. Sec.

William A. Spencer, Clerk of the Court of Appeals, of Maryland, do hereby Certify - That the foregoing Decree is truly taken, from the Record of proceedings of the Court of Appeals of the said State.



In Testimony whereof, I hereunto set my hand, as Clerk, & affixed the Seal of the said Court, of Appeals, this Seventh, day of January 1853.  
William A. Spencer, Clerk.

John Eyles & Jonas Matthews. } Court of Appeals, Term Term 1852.  
Frederick Crabbs. } Appeal from Equity Side of Frederick County Court.  
LeGrand - Chief Justice, delivered the Opinion of the Court. The view which we have taken of this case, as presented by the record dispenses with the necessity of considering some of the points made in the argument of Counsel. The bill was filed for the double purpose of annulling the deed executed by Eyles to Matthews, and of enforcing as against the defendants, an alleged lien for the unpaid purchase money due upon a sale, and conveyance of the property mentioned in the deed from Eyles to Matthews. The Decree pronounced by the County Court is founded entirely on the ground that the vendors lien, has been made out against both of the defendants. To sustain such a Decree, it is necessary it should appear, that either Eyles was insolvent, or that the Complainant has exhausted, all his other remedies, before he filed his Bill. Pratt. v. Vanwyck's Exrs 6 Gill & John. 496. & Richardson v. Stillinger 12 Gill & John 477. are sufficient authority for the doctrine. The question then is has the Complainant established either of these propositions? We think not. The Complainant does not aver, that he had exhausted his remedies against Eyles, before he filed his Bill, against both of the defendants. But this omission - since the act of 1832, would not prejudice his case before this Court, provided there was proof to show the fact, no exception having been taken, to the sufficiency of the averments of the