

The testimony of the witness was taken and returned accordingly; but as the testimony of this same witness was afterwards regularly taken, it is unnecessary here to take any further notice of this examination *de bene esse*.

The defendants, David English and wife, on the 8th of May, 1822, filed their answer, which sets out in these words: "The answer of David English, and Lydia English his wife, formerly Lydia Henderson, administratrix of John Henderson, to the bill of complaint of Janet Lingan and others. The said defendant saving \* and reserving to herself now, and at all times hereafter, **239** all and all manner of benefit and advantage of exceptions to the manifold uncertainties and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or to so much thereof as materially concerns these defendants, to make answer unto the said defendant Lydia English, answereth and saith, that she admits," that James M. Lingan, by deed bearing date on the 8th of May, 1807, conveyed to John Henderson the tract of land as mentioned by the plaintiffs; that John Henderson died intestate leaving the heirs, and that administration was granted on his estate as stated by the plaintiffs; but, that no final account hath been passed, by which she can ascertain whether the personal assets of the intestate are sufficient to pay all just debts against his estate. She further alleges, that about the first of December, 1798, James M. Lingan, being possessed of a grist and saw-mill, and other improvements, and of land adjacent, agreed with John Henderson to carry on the same in partnership; which John Henderson carried on from that time until some time about the year 1807; by which considerable profits were made, which came to the use of James M. Lingan in his life-time; that Richard Henderson, the father of John Henderson, died, leaving five children, Janet, the wife of James M. Lingan, John Henderson, Sarah Henderson, Arrianna Sims, and Ann Henderson; and was at the time of his death possessed of a large real and personal estate; upon which James M. Lingan and John Henderson took out letters of administration of the personal estate jointly; that James M. Lingan had possession, under those letters, of all the intestate's personal estate; collected the whole of the debts, and enjoyed the benefit of the commissions allowed for administering the estate, which amounted to a considerable sum. The defendant Lydia further answering, says, that John Henderson has never yet received any part of what he was entitled to from Richard Henderson's estate, but that the same has remained in the hands of James M. Lingan. She admits such an instrument of writing as that of the 10th of June, 1807, mentioned in the bill, was executed by John Henderson; but she understood, that the land was to be accounted for in the general settlement of accounts between them at the price for which they had agreed; that in the settlement of