

the plea was offered too late, and it was accordingly rejected. *McMechen v. Chase*, 1 *Bland*, 85 n.

In this case the opponent Welch, by his bill, filed on the 2d of August, 1827, averred that this claim, which he called into Court, had been paid; and the claimant Stockett, by his answer, filed on the 19th of October, 1827, denied that allegation. The parties were thus at issue upon the fact of payment, which the opponent has failed to sustain by any proof whatever. After which, and all the intermediate proceedings in the case, it certainly could not now be in order, or consistent with a well-regulated administration of justice to permit this opponent to abandon that issue, and so late as the 29th of June last, to make up another issue, and to present a new defence against this claim, founded on the Statute of Limitations. *Kemp v. Mackrill*, 2 *Ves.* 580.

45 * Upon the whole, I am of opinion, that the opposition to this claim of Joseph N. Stockett as administrator is altogether untenable; and that therefore it must be allowed to take its stand as one of the preferred claims provided for by the deed of trust.

The claims of Saunders' representatives, and all others not now authenticated, or admitted according to the course of the Court must be altogether rejected.

Whereupon it is ordered, that this case be, and the same is hereby referred to the auditor, with directions to state an account accordingly.

In obedience to these orders the auditor made a report, which was confirmed on the 14th of August, 1829.

TOWNSHEND v. DUNCAN.

CHANCERY PLEADING AND PRACTICE.—CHARGE OF ANNUITY UPON LAND.—AUDITORS.

A plaintiff must state in the bill such facts as are necessary to entitle him to relief; and also shew why he may ask that relief of a Court of equity. (a) Where the case set forth in the bill is such as to entitle the plaintiff to relief, the Court may have further inquiries made by the auditor, so as to adapt the relief to the peculiar nature of the case.

Where an infant takes as devisee, it is not necessary to charge in the bill that he received the rents and profits; because it is the duty of his guardian to take care of his estate.

Where there was an annual sum given by will to one, "to be paid out of the profits of the real estate" devised to another, Chancery may decree an account for it, or may have the land sold for its payment, or have it

(a) Approved in *Kunkel v. Markell*, 26 Md. 409.