

the maintenance and education of the children of the deceased. And finally, this defendant submits, that by the negligence and misconduct of the plaintiff Tessier, he has lost all right to demand any portion of either the real or personal estate of the testator; and that his only remedy is against the person of the defendant John M. Wyse or his estate, if he has any, &c.

32 *The defendants Eliza Wyse and Margaretta Wyse, on the 30th of September, 1825, put in their answer, in which they admit, that their father made his will and died seised and possessed of real and personal estate, leaving the children as mentioned, and a widow to whom administration was granted, and who took possession of the personal estate accordingly. They state, that a part of the real estate was sold under the decree mentioned in the bill, and the proceeds of the sale applied to the maintenance of the children of the deceased. But they expressly deny that the defendant Tessier ever had any claim against the testator, either as assignee or otherwise; and they say they do not know the amount of the claim of S. Smith & Buchanan.

On the same day the infant defendants Edward, Nicholas H., Matilda, and Francis O. Wyse, put in their answer by their guardian, *ad litem*, in which they admitted the will and death of the testator as stated; and hoped that the Court would protect their rights.

The defendant Allender, by his answer, filed on the 14th of December, 1825, admits the will, the death of the testator, the administration to Rachel Wyse, her possession of the personalty, the making of the mortgage to the defendant Riston, the death of Rachel, and the granting of administration *de bonis non* to himself, and the inventory returned by him as stated in the bill. He also admits, that the testator was indebted to S. Smith & Buchanan, but does not know the amount; nor does he know any thing of the assignment of their claim to the plaintiff Tessier, and he denies that he has any evidence of that claim in his possession.

On the 13th of April, 1826, the defendant John M. Wyse filed his answer, in which he admits, that the testator was indebted to S. Smith & Buchanan; that he made his will, and that after his death, administration was granted to his widow Rachel Wyse, who is since dead; and that the testator left the children and died seised and possessed of real and personal estate, as set forth in the bill; that a decree was obtained for the sale of the real estate of the deceased, as directed by his will; and about sixty acres of it was sold, and the proceeds thereof appropriated to the benefit his children; and that a mortgage was made, as stated, to the defendant Riston. This defendant further states, that it was agreed between the plaintiffs Rachel Wyse and this defendant, that in consideration of the plaintiff Tessier's delivering to S. Smith &