

Buchanan their note held by him, they would assign to him their * claim upon the testator, for which his then administratrix Rachel Wyse and this defendant were to give their bond for the amount thereof, including principal and interest up to that time; which note was accordingly delivered, assignment made, and bond given by them and received by the plaintiff Tessier, in full satisfaction of his claim against the estate of the testator; and that the plaintiff Tessier never received the assignment of the account and claim of S. Smith & Buchanan, with a view of demanding payment of the estate of the testator; and that the said account and claim, with a receipt thereon, was in the possession of this defendant; but has been mislaid by him and cannot now be found. This defendant admits, that suits were brought and judgments obtained on the bond, as stated. **33**

The defendant William A. Wyse filed his answer on the 26th of April, 1826, in which he admits, that the late William Wyse made his will; that after his death, administration was granted, &c., as stated in the bill. This defendant also admits, that the testator was indebted to S. Smith & Buchanan; but puts the plaintiff to the proof of the account: He, however, expressly denies, that the claim of S. Smith & Buchanan, was by them assigned to the plaintiff Tessier, or that he now has, or ever had any such claim as the real estate which descended to this defendant from the testator, can legally or equitably be chargeable with; nor have S. Smith & Buchanan now any claim, legal or equitable, against the said real estate. This defendant admits, that a part of the real estate of the deceased was sold under a decree of this Court, and the proceeds thereof applied to the maintenance and education of his children.

To these answers the plaintiffs put in a general replication; upon which commissions were issued, under which proofs were taken and returned. From the testimony it appears that William Wyse made his will, and died seised of real estate, consisting of houses, and a wharf in the City of Baltimore, and of a farm in Baltimore County; and possessed of a considerable amount of personal property, leaving a widow and children, as stated and named in the bill; that administration with his will annexed was granted to his widow Rachel Wyse, who on the 23rd of July, 1814, returned an inventory of his personal estate, consisting of negro slaves, cattle, farming utensils, household furniture, merchandise, and other articles, amounting to \$6,735.25; and by her first account, passed on the 29th of June, 1816, she admitted, she had * assets then in her hands to the amount of \$5,712.34.

The claim of S. Smith & Buchanan, and the assignment of it to Tessier; the giving of the bond by Rachel Wyse and John M. Wyse to Tessier, not as a payment, but merely as a collateral security, as stated in the bill, were fully established by several **34**