

ceeding may have been, in some particulars, varied; but the substance of them cannot have been affected in any manner whatever by any proceeding or conduct of his co-heirs alone. And those remedies whether upon the bond and lien, or upon the judgment and lien; because of the bond having been transformed into a matter of record by the judgment, *Higgen's Case*, 6 Co. 45, it is most manifest must be by a proceeding at the common law as prescribed by the Act to Direct Descents; since there can be no equitable lien of any description which can be dealt with by this Court.

It is unnecessary to say any thing as to the want of proper parties, which has been set down among others of the causes of this **551** *demurrer; because if there were no other or more substantial objections to this bill, the case would be ordered to stand over with leave to amend and make proper parties; but as the other objections go to the substance and merits of the complaint, the case must be now finally decided.

Whereupon it is decreed, that the plaintiff's bill of complaint be and the same is hereby dismissed with costs, to be taxed by the register.

See this case as disposed of by the Court of Appeals, 6 G. & J. 49.

NEALE *v.* HAGTHROP. (a)

BILLS FOR ACCOUNT.—ADMINISTRATORS DE BONIS NON.—SURPLUSAGE.—ANSWERS IN EQUITY.—CONDITIONAL CONVEYANCE.—NOTICE.—ABATEMENT.

On a bill for relief, discovery, and account, the right of the plaintiff must be first decided; after which an account may be taken; and if the relief required be the sale or delivery of a thing with its rents and profits during the time of its unjust detention, the delivery or sale should be first ordered, and then an account up to the time of such sale or delivery.

An administrator *de bonis non* can recover only such assets as have not been converted or distributed by his predecessor. (b)

Although the next of kin of an intestate have a vested interest in the surplus of his personal estate, they can only make title, or recover from or through an administrator. (c)

Statements in the bill or answer as to agreements with persons not parties to the suit, the nature and validity of which agreements are not drawn in question; and all careless verbiage may be rejected as mere surplusage.

(a) See *Hagthorp v. Neale*, 7 G. & J. 13.

(b) Cited in *State v. Hart*, 57 Md. 238, where it was held that an administrator *d. b. n.* cannot sue a former administrator for money collected by him, without having first obtained an order from the Orphans' Court in pursuance of Rev. Code, Art. 50, sec. 109. As to the powers of administrators *d. b. n.* see *Gardner v. Sinmes*, 1 Gill, 425, note.

(c) Approved in *Cecil v. Rose*, 17 Md. 102. See *Rockwell v. Young*, 60 Md. 563.