

The defence made by the answer was, payment in whole, or in part, and sundry objections to the form of the bill, were urged, at the hearing. In evidence of payment, the defendants rely partly upon a paper filed, containing a memorandum in Compton's hand writing, by which he charges himself with "amount of Barnes' draft \$500," which draft was not produced nor was any proof offered of its payment, or to show upon what account it was drawn. Another credit of \$1500, was also claimed by the defendants, the character of which will appear in the Chancellor's opinion.

The first point noticed by the Chancellor, was the alleged want of jurisdiction in the court to decree a payment of the legacy, the courts of law being fully competent to give relief, in reference to which, he said :]

THE CHANCELLOR :

Considering this as the will of the administrators of Mrs. Compton, and that the right to recover, if it exists at all, is in them, it is a proceeding, the representatives of a ward, against the executors of a guardian, to recover a legacy which had been bequeathed the ward, and which the guardian in that capacity had received from the executors of the testator, by whom the bequest was made.

It is a bill, then, in equity, by a ward against her guardian—that is by a *cestuique trust*, against the trustee. The relation of guardian and ward constituting, as Mr. Justice Story says, the most important and delicate of trusts, and as this relation and the rights and obligations which grow out of it, are peculiarly within the jurisdiction of this court, its power to afford a remedy for a breach of the trust cannot be denied, unless it can be clearly shown to have been taken away by some express statutory enactment.

In the matter of *Andrews*, 1 *Johns. Chan. Rep.*, 99, Chancellor Kent says, that every guardian, however appointed, is responsible in equity for his conduct, and may be removed for misbehavior, and that a testamentary, or statute guardian, is as much under the superintendance of the Court of Chancery as the guardian in socage.