

The questions of form being disposed of, it remains briefly to consider the case upon its merits, as disclosed by the evidence.

The issue presented by the pleading is, payment, or non payment, and the *onus* of that issue is upon the defendants.

Their answer, from the nature of the case, is not evidence, because they cannot have, and do not, indeed, pretend to have, any personal knowledge upon the subject, and speak only of their impressions founded upon circumstances, which it is presumed are laid before the court in the testimony.

It appears from a book indorsed "accounts of John Barnes, surviving executor of Samuel Bond," filed by the defendants, that John Barnes did, as guardian to Mary C. B. Barnes, his daughter, receive her proportion of the negroes, and the pecuniary legacy of three thousand dollars bequeathed her by the testator, Samuel Bond, and the defendants, therefore, as the executors of the said Barnes must be decreed to pay that legacy, unless they have succeeded in proving payment of it in whole or in part.

[The Chancellor, after alluding to the draft for \$500, mentioned above, said :]

It is possible, certainly, that it may have been a draft by Compton on Barnes, and that the latter may have accepted and paid in part discharge of the legacy ; but looking to the paper itself, and in the absence of the draft, which, if paid, ought to have been in the possession of Barnes, it seems to me, it would be a departure from those rules which have been established for the ascertainment of truth, to give it the effect for which the defendants insist.

The defendants also claim a credit for the sum of fifteen hundred dollars, being the amount of a check by John Barnes, on the Bank of Baltimore, dated the 25th of October, 1831, drawn payable to William P. Compton, or bearer, and which appears, by the evidence, to have been paid by the bank on the day following. It also appears, by the evidence of the bank officer,