

that the check for the precise balance standing to the credit of Mrs. Barnes, but to whom the money was paid, does not appear, and it is very certain, that the check authorized any bearer to receive it, it being, in effect, payable to bearer. Now, in this state of the case, can this court undertake to say, that this sum of fifteen hundred dollars was paid by Barnes to Compton, on account of the legacy bequeathed by Bond to Mary C. B. Barnes?

It has been said by high authority, that courts of justice are not at liberty to indulge in wild irrational conjectures, or licentious speculation. They must act upon fixed and settled rules, or the rights of persons and property, for the preservation of which they are instituted, will be exposed to painful uncertainty, or involved in inextricable confusion. It is true, that a rigid adherence to those rules may sometimes work injustice in particular cases, but it is far better that individuals should occasionally suffer, than that principles, which time and experience have shown to be essential to the ascertainment of truth, shall be broken down, or disregarded.

It is certainly possible, that these two sums of five hundred and fifteen hundred dollars, may have been paid on account of this legacy, and if so, the estate of Mr. Barnes is injured by the refusal of the court to allow credit for them?

But who is to blame for it? Surely himself in neglecting those ordinary precautions which are usually observed in the transaction of business. He took no receipts. He passed no account as guardian claiming credits. He made no entry in his books, or any memorandum among his papers (so far as the proof shows) of any such payments. The written evidence relied upon, together with the parol proof of Mr. Stone, is wholly inconclusive and unsatisfactory; and I, therefore, feel it to be my duty not to give it the weight attached to it.

The court, therefore, will sign an order, referring this case to the Auditor, with directions to state an account, in which the defendants, as the executors of the late John Barnes, will be charged with the pecuniary legacy bequeathed by the late Samuel Bond to Mary C. B. Barnes, afterwards Mary C. B.