

sonal and mixed, in trust to sell for the benefit of his creditors. On the 1st February, 1847, the trustee, who had partly executed the trust, filed his bill in this court, making John H. Hilleary, and others of the creditors, parties, for a sale of the property, and for the direction of the court as to the management of the trust. John H. Hilleary in his answer, set out his claims against Wheeler, amongst which was that hereafter referred to as No. 2. The cause was set down for hearing upon bill and answer, and a decree passed by consent, in conformity with the prayer of the bill, and directing an account by the trustee of the sales made by him previous to the filing of the bill, "all equities being reserved as to the creditors of the said Wheeler, entitled under the said deed of trust, for or on account of the proceedings of the trustee, previous thereto, nothing being herein intended to affirm the propriety thereof," and with a similar reservation of the equities of said creditors as to the sales to be made under the decree. The trustee thereupon proceeded to make farther sales, reported those made before the decree and brought considerable sums into court.

The case came up on exceptions to the Auditor's report as to claim No. 2, in the statement of claims.

This claim was founded upon the joint and several single bill of the said grantor, Thomas T. Wheeler, of Odel Wheeler and Thomas Hilleary, all of whom were admitted to be principals, for \$1800, dated 17th March, 1825, and payable twelve months after date, with interest from date, upon which judgment was recovered at March term, 1829, of Montgomery County Court against Thomas T. Wheeler and Thomas Hilleary, in the name of Thomas S. Wilson, the obligee, for the use of Jonathan T. Wilson; which was revived at November term, 1843, against said Wheeler alone, in the name of the executors of the obligee, for the use of the said Jonathan T. Wilson, \$570 being credited thereon, as of the 7th May, 1829, and against John H. Hilleary, as administrator of Thomas, and was afterwards paid by John H. Hilleary, as appears by his answer, on which it was assigned to him. No proceedings were instituted against Odel Wheeler, the other co-obligor, and an agree-