

4th. Because there was no evidence in the cause, of the time or amount of payment made by Hilleary, on which he procured the assignment.

It was contended by Hilleary's solicitor, that as his claim was set up in his answer, and the decree was passed on bill and answer, no further proof could be required of him; and on the other side it was asserted, that the reservation in the decree prevented that effect.]

THE CHANCELLOR :

I do not look upon it, the reservation, as at all affecting the rule, that when a case is set down for hearing on bill and answer, all the averments of the latter, whether responsive or not to the allegations of the bill, are to be taken for true. All the creditors of Wheeler not being parties to the bill, it seemed proper that there should be a reservation of their equities, not only with respect to the proceedings of the trustee, before he invoked the aid of this court, in the execution of his trust, but that the reservation should extend to what might be done subsequently thereto.

This is my understanding of the scope of the reservation, and I think it would be carrying it beyond its legitimate extent, to construe it, so as to require proof of facts which according to the rules of pleading, and the practice of this court, would, but for the reservation, be considered admitted.

It is apparent upon the face of the instrument itself, (the single bill,) "and it is admitted in writing, that the three parties were all principals in the single bill, and therefore it is to be intended, that they each receive one-third of the consideration upon which it was executed. And it likewise appears by the agreement between the representatives of Odel Wheeler and Thomas T. Wheeler, that the latter, for a valuable consideration paid him by the former, released and discharged them from all obligation to contribute to the payment of the debt, to the obligee, Wilson, and contracted to indemnify and save them harmless on account of the same. It is true, Thomas T. Wheeler stipulates in the said agreement, that he shall have power