to be secured by the notes, was still at his disposal, and he desired the payments should be anticipated, if necessary to enable him to complete his contract. With what propriety could he agree with the defendant, for advancing him money on these notes, if he had stipulated with the complainant, that he should have them! And is it at all likely, that the defendant would have made such advances, and then exposed himself to the peril of serious loss, if he had been notified of the assignment of these notes to the complainant!

I cannot bring myself to think so. Here, then, is the case of an answer, explicitly denying the fact, upon which the equity of the complainant's claim for relief rests. This answer is contradicted by one witness, but the conduct of that witness, and the conduct of the defendant, are strong to create doubt of the accuracy of the statement of the witness. And therefore, giving the answer the effect to which it is entitled, it follows, that the plaintiff has failed to make out a case for relief, and his bill must be dismissed.

C. F. MAYER & WARD for plaintiff.

LATROBE & HORSEY for defendants.

HEZEKIAH LINTHICUM
vs.
WESLEY LINTHICUM.

SEPTEMBER TERM, 1849.

[PAROL PROOF—CANCELLING OF BOND.]

UPON a bill filed by an obligor, in a sealed note against the executor of the obligee, the note was decreed to be cancelled upon proof that the testator did not intend to exact payment of the money due upon it, but originally intended it as a gift, or afterwards treated it as such, and abandoned it as a debt,—although this proof consisted entirely of the parol declarations of the testator, unaccompanied by any other statements, or papers of any description.

Authorities on this subject reviewed and considered.