

it out of its operation, and that it is, therefore, clear, the plaintiff can have no relief upon his bill.

That the regular and proper course of proceeding, was by a petition in the first cause to enforce the order of the Chancellor ratifying the report of the Auditor, and not by filing an independent bill.

That as this bill was for the payment of a specific sum of money, and not for an account generally, though the plaintiff can have no decree, the defendants cannot have one for their overpayment.

[The bill was filed on the 25th of November, 1843, by the complainant, Henry F. Frieze, and after alleging his appointment as administrator of Rachael Forsyth, states and charges that John Glenn and David Stewart, the defendants, as administrators c. t. a. of Alexander Forsyth, heretofore filed their bill against the said Rachael, charging her with a failure to comply with the terms of sale made by them as administrators as aforesaid, and praying for a decree for the sale of the property of which the said Rachael had become the purchaser, for the payment of the purchase money due by her. That a decree was accordingly passed, appointing the said Glenn and Stewart trustees, to make the said sale, and the said Rachael again become the purchaser of the property. That the Auditor, by his report in that case, of the 9th of March, 1837, assigned the sum of \$1,208 76 to the said Rachael, and that this report was confirmed on the 10th of March, 1837. The bill then charges that this sum was due and owing by the said trustees to the said Rachael at the time of her death, that they have refused to pay the same, and prays that they may be decreed to pay the same.

The answer of Glenn and Stewart, filed on the 8th of January, 1844, admits the appointment of the complainant as administrator of the said Rachael, the appointment of the defendants as trustees, the purchase of the property by the said Rachael, and the report of the Auditor, as alleged in the bill. It then charges that the defendants called upon said Rachael to comply with the terms of sale, when she declared herself wholly unable so to do. That in the early part of September, 1837, the said Rachael, by one Alexander Yearly, her agent, sold the said property to Mrs. Helena Stewart, the latter agreeing to