

this allegation, and, therefore, assuming the mental capacity of Charles T. Ellicott, to dispose of his property, the deed must operate upon it.

From these views, it follows, the plaintiffs have no title, and their bill must be dismissed.]

S. TEACKLE WALLIS, JOHN GLENN, and REVERDY JOHNSON
for Complainants.

J. PENNINGTON, T. P. SCOTT, WM. SCHLEY for Defendants.

[No appeal was taken in this case.]

JOHN H. B. LATROBE ET AL. }
vs. } MARCH TERM, 1851.
WILLIAM H. TIERNAN ET AL. }

[LACHES—POWERS AND DUTIES OF TRUSTEES.]

S. and G. were in July, 1836, by agreement of parties, and with the consent of the Chancellor, constituted trustees to receive and invest, *pendente lite*, a certain sum of money detained in court by appeal. The money was paid to them jointly, and they gave a joint receipt therefor, and loaned \$5000, part thereof, to T., who secured the same by a mortgage of certain real estate to S. and G. jointly. The mortgagor paid interest from time to time to S., one of the trustees, and in 1841, his executors, he having previously died, paid the entire principal to S., and the mortgage was released by S. alone. The payments to S. were without the knowledge, privity or consent of G., who was also ignorant of the release. The appeal was decided in 1838, but no application was made for a distribution of the fund, by those entitled to it by the decision on the appeal, until 1843, when a petition was filed, requiring the trustees to account, and seeking to make G. responsible for the amount received by S., and which he had misapplied. The court of appeals in 1845, decided that G. was not responsible, for the reason, among others, of the delay of the petitioners in asserting their claim, and it was not until 1848, ten years after the decision on the appeal, and after the insolvency and death of S., that this bill was filed by the original petitioners or the parties representing them, against the defendants, the executors of T., and their alienees, seeking