

had become necessary, by the appointment of a trustee in the place of Davis. This was done, and by an order passed on the 9th of February, 1852, the cause, with regard to the questions left open by the decree of May, 1851, was sent to the Auditor for an account from the pleadings and proofs then in the cause, and such further proofs as the parties might lay before him.

This has been done, and in the account C, stated under instructions from the solicitor of the complainant, the defendant, Davis, as executor of Solomon Betts, has been charged with the note referred to, with interest from the 20th of November, 1843, when it was said, and as before observed, the propriety of so charging him is the only question of importance presented by the exceptions which have been argued.

In addition to the exception filed by Mr. Davis to the account C, he has filed an exception to the sufficiency of the averments of the original and supplemental bill, to enable the complainant to recover for the note of Rogers; and it seems to me very clear, that the bills contain no averment which will justify the Court in granting relief in the form in which it is now proposed to charge the defendant, with respect to this note, upon any prayer in the bill, general or special.

The object of the supplemental bill was simply to bring in the new party, and contains no averments, except that which was necessary to accomplish the purpose in view. And with reference to this note of Mr. Rogers, the original bill, by its averments and prayer, claimed it as the property of Mrs. Hitch, by virtue of a parol gift of it to her, by her father, in his lifetime. The question, and the only question which was or could have been raised upon that bill, was, whether the note was her property or not. The idea that it was to be regarded or treated as assets in the hands of the defendant, as executor of Mr. Betts, was wholly repudiated, and a decree founded upon the hypothesis, that it was an asset, would have been repugnant to the very letter and theory of the bill, and the specific prayer for relief.

It is well settled upon the authority of numerous cases, that