

dition of the deed which required them to hold the property for the separate use of Mrs. Smith. But this argument puts the petitioner's right to relief upon a ground different from that taken in the petition. The petition does not allege that they (Neale and Lockett) surrendered the property or any part of it to other persons, thereby defeating one of the stipulations of the deed, but that they sold it, though by the deed they should have held or conveyed it to some persons to be named by Mrs. Smith, for her separate use, that being the only condition upon which she had conveyed her interest in the estate of her father.

Assuming, however, that the petitioner, though he has alleged a sale, may rely upon the answer as a ground of relief, it does not by any means follow, that he has a right to take from Neale and Lockett, the money which has been awarded them in this case. The mortgage from Mr. Smith to these parties says, "that after the full payment of their claim, the said Neale and Lockett the property aforesaid shall hold and retain, or convey to such person or persons, &c., as Mrs. Smith, by writing, may direct and appoint, for her sole and separate use."

Now in their answer, they say that the larger portion of the property conveyed by the mortgage executed by Smith, was claimed by the administrator *d. b. n.* of his father, and that though they considered themselves amply secured by the assignment or conveyance of Mrs. Smith, they employed counsel to examine into the question of title, and their counsel being of opinion that the title of Smith was defective, they did agree to surrender *their interest* in the same to the administrator *d. b. n.*, "expressly reserving, however, all right or claim which Mrs. Smith might have thereto or therein, and offering to the counsel of Mrs. Smith the use of their names for the purpose of prosecuting or maintaining any such right, and tendering themselves ready to transfer to her trustee the interest in the mortgage which they might represent for her."

Now I cannot think, that by such conduct as this, Messrs. Neale and Lockett have forfeited their right to look to the proceeds of the property sold in this cause, for the reimburse-