

had obtained letters of administration *de bonis non* on the estate of the testator *Samuel W. Clagett*, and had advertised for sale, and was about to sell those very slaves, which had been so specifically bequeathed and delivered to these plaintiffs. The plaintiffs, by their bill, averred, that no debt was then due on the final account of the late *Walter Clagett*; that it had been satisfied; that no suit had ever been instituted to establish it; and that it was barred by the statute of limitations. Whereupon the plaintiffs prayed, that they might have an injunction to prevent the defendant from making sale of the property so bequeathed to them; and that they might have relief, &c. The injunction was granted as prayed.

The defendant put in his answer, in which he admits the facts as stated in the bill; but denies that the claim had ever been paid; and insists, that it could not be barred by the statute of limitations, as there had not been, until he administered on the estate of *Samuel W. Clagett*, any one against whom suit for its recovery could have been brought; and that it was with him alone to admit or deny the existence of the debt.

Upon this answer the defendant gave notice of a motion to dissolve the injunction: on the hearing of which on the 17th of March 1827, it was continued until the final hearing or further order. After which a commission was issued, under which testimony was taken and returned, and the case set down for final hearing.

30th July, 1828.—BLAND, Chancellor.—This case standing ready for hearing, the solicitors of the parties were fully heard and the proceedings read and considered.

The object of this bill is not to repel a claim made by the executor of *Walter Clagett* against these plaintiffs; but to restrain the defendant, as administrator *de bonis non* of *Samuel W. Clagett*, from officiously making sale of that which had been the property of his testator, (but which had, long since, been legally delivered over to these plaintiffs to whom it had been bequeathed,) for the purpose of paying the claim, which *Walter*, by reason of his overpayment, as is alleged, had against the estate of his testator *Samuel*.

An executor who overpays is allowed, for such amount, to take the place of the creditor whose claim he has thus paid beyond the assets of his testator. He is, by substitution, regarded as one of the creditors of his testator: but such executor must establish the claim so overpaid against the heir or devisee by the same kind of testimony which might have been required of the original