

mitted, that the legacy had been given as stated; that it had been received and invested by the trustees; that her testator had been the surviving trustee; that he, as such, believing he had the proper authority to do so from the parties interested, had made sale of the English stock, in which the legacy had been invested, and had the proceeds, amounting to \$8,273 33, remitted to him here; and that, on the 24th of March, 1819, he invested \$3,828 88, part thereof, in stock of *The City Bank of Baltimore*; and the further sum of \$4,444 44, other part thereof, he had loaned to *James Clerklee*, on a mortgage of real estate; and the residue, amounting to £212 Os. Od., sterling, remained in the hands of *Wentworth, Chaloner & Co.*, of London, bankers of her testator, who claimed a right to retain it in discharge of a debt due from him. 'That she has not yet been able to settle up the estate of her testator, and that there are considerable debts now due to the same which are still unpaid; and that the assets now in her possession are insufficient to discharge the debts due by the testator.' Various other matters were set forth and relied on in this answer which it will be unnecessary to notice here, as all the material allegations of the parties, and the circumstances of the case are fully stated by the Chancellor in his opinion.

The plaintiffs by their petition alleged, that the testator of the defendant *Eleanor Dawson*, had been a trustee for the benefit of them and others interested in the legacy; that as such he had received £2,406 14s. 2d. sterling, and withheld it from them, as did the said *Eleanor* since his decease; that the said *Eleanor Dawson* had, under oath, settled a final account in the Orphans Court, whereby there appeared to be a balance over and above the payment of debts of \$13,357 44. But by the account so referred to and exhibited with the petition, headed as 'the first account' of this executrix, passed on the 22d of January, 1823, the concluding allowance in which is in these words: 'Retained by this accountant, being the residue of the deceased's estate, according to the last will and testament of the deceased, \$13,357 44.' Whereupon it was prayed, that the defendant *Eleanor Dawson*, might be ordered to bring that sum into court to await the final decree.

On the 27th of February, 1826, it was *Ordered*, that she bring in that sum of money as prayed, on the 3d of April then next, or shew cause; provided a copy be served, &c.

On the 13th of July, 1826, *Eleanor Dawson* filed her answer, without oath, to this petition, shewing for cause, that the plain-