

On discovering, at the hearing, that a party had failed to take some material testimony, the case was, on affidavit, continued, and a commission issued to take the evidence. A person who acquires personal assets by being party to a breach of trust, or *devastavit* by the executor or administrator, may be held liable.

A deed or mortgage given to secure the payment of money cannot be objected to by a party, because of its not having been recorded. What acts of the creditor will discharge a surety. If all the creditor's remedies be expressly reserved, the surety will not be discharged by any act of the creditor. Where a mortgage debt is payable by instalments, the mortgage may be foreclosed when the first instalment becomes due. An injunction granted to protect mortgaged property before the mortgage debt became due.

THIS bill was filed on the 14th day of July, 1828, by *Charles Salmon* against *Elizabeth Clagett, Edmund Clagett, Samuel A. Clagett, John W. Clagett, Thomas Clagett, and Richard H. Clagett*. It is stated and appears, that some time in or before the year 1816, *William Clagett* died intestate, leaving a considerable real and personal estate, and the defendant *Elizabeth* his widow, and the other defendants his children. Soon after the death of the late *William*, his widow, having been appointed his administratrix, took possession of his personal estate, returned an inventory thereof, and settled accounts with the Orphans Court, shewing a surplus to the amount of \$2,753 13; and although a distribution had been ordered by the Orphans Court, yet she had not actually delivered the property or paid any money accordingly to either of the representatives of her intestate; but together with the defendant *Edmund Clagett*, retained the possession of all the deceased's real and personal estate, using and employing it for the common benefit of themselves, and his other legal representatives. That in the summer of 1827, the defendant *Thomas Clagett*, commenced business as a merchant in the city of Baltimore; and to enable him the more advantageously to carry on his trade, the plaintiff *Charles Salmon*, was induced to lend his credit to him upon receiving, as a security against loss, a mortgage from the defendant *Thomas Clagett*, and the other defendants, who are his mother and brothers, the material parts of which deed are expressed in these words:

This Indenture, made this 22d of September, 1827, between *Elizabeth Clagett, Edmund Clagett, Samuel A. Clagett, Richard H. Clagett, John W. Clagett, and Thomas Clagett*, of the one part, and *Charles Salmon* of the other part. 'Whereas, the said *Thomas Clagett*, one of the parties of the first part of this deed, hath lately commenced and intends pursuing the business of a merchant in the city of Baltimore; and whereas, the said *Charles*