

demurrer; because if there were no other or more substantial objections to this bill, the case would be ordered to stand over with leave to amend and make proper parties; but as the other objections go to the substance and merits of the complaint, the case must be now finally decided.

Whereupon it is *Decreed*, that the plaintiff's bill of complaint be and the same is hereby dismissed with costs, to be taxed by the register.

---

See this case as disposed of by the Court of Appeals, 6 G. & J. 49.

---

NEALE v. HAGTHROP.

On a bill for relief, discovery, and account, the right of the plaintiff must be first decided; after which an account may be taken; and if the relief required be the sale or delivery of a thing with its rents and profits during the time of its unjust detention, the delivery or sale should be first ordered, and then an account up to the time of such sale or delivery.

An administrator *de bonis non* can recover only such assets as have not been converted or distributed by his predecessor.—Although the next of kin of an intestate have a vested interest in the surplus of his personal estate, they can only make title, or recover from or through an administrator.—Statements in the bill or answer as to agreements with persons not parties to the suit, the nature and validity of which agreements are not drawn in question; and all careless verbiage may be rejected as mere surplusage.

The answer of a defendant is taken for true so far as it is responsive to the bill, unless disproved.—Its allegations of fact not responsive, but in avoidance must be proved.—If a defendant submits to answer at all, he must answer fully and particularly.—Any material allegation left unanswered may, at the hearing, be taken for true.—Where a defendant declares, that he is entirely ignorant of the matters stated in the bill and leaves the defendant to make out his case, or in words to that effect, and the plaintiff replies, the allegations of the bill are thus put in issue and must be proved.

A deed by which a father conveyed all his personal estate to his son, upon condition, that the son should pay certain specified debts due by the father, *Held* to give rise to a resulting trust in favour of the father, so as to require the son to shew, that the specified debts of the father had been paid; and to give the representative of the father a right to relief and an account.

A purchaser for a valuable consideration without notice will not be disturbed.—What is notice?—Where a bill prays relief against several on the ground, that the deed under which they all claim is fraudulent, and one dies, the suit abates as to all.

THIS bill was filed on the 15th of December, 1820, by *James Neale*, administrator *de bonis non* of *Anthony Hook*, deceased, against *Edward Hagthrop* and *Barbara* his wife, administratrix of