

witnesses. It was also shewn, that judgments had been confessed; but that they remained ineffectual, as stated, because the bond had been lost by the attorney of the plaintiff Tessier. It was further shewn, that a mortgage had been made, as stated, to George Riston. That in the petition filed by Rachel Wyse and John M. Wyse in this Court, for the sale of the testator's real estate, called Deer Park, it was stated, that S. Smith & Buchanan had a claim against his estate; and that after the payment of that claim; deducting the commissions to the administratrix; and the widow's third, the other two-thirds left for the support of the children, would be wholly inadequate for that purpose; so that their interests and necessities required a sale of the lands as directed by the testator. On the 1st of October, 1816, a decree was therefore passed directing a sale; which sale, as admitted by the answers of some of the defendants, was accordingly made. It was further shewn, that Rachel Wyse was dead; that administration *de bonis non*, with the will annexed, had been granted to Joseph Allender; who on the 23rd of January, 1824, returned an inventory of the property which had come to his hands, amounting to \$2,293, consisting of negro slaves, cattle, household furniture, and some other articles.

BLAND, C., 7th September, 1830.—This case standing ready for hearing, and having been argued by the plaintiff's solicitor, and submitted without argument by the solicitor for all the heirs of the late William Wyse, and no solicitor appearing for the other defendants, before the close of the sittings of the term according to the rule, the proceedings were read and considered.

The claim of the plaintiff Tessier, as stated in the bill, has been fully established. But the defendant Riston, in his answer, alleges, that the plaintiff Tessier, by his negligence and misconduct, has lost all right to any portion of either the real or personal estate of the testator; and that his only remedy is against the person of the defendant John M. Wyse. And the defendant William A. Wyse, denies that S. Smith & Buchanan now have, or ever had any such claim as the real estate of the testator could be charged with. From these allegations it is clear, that these defendants do not rely upon the Statute of Limitations, or any lapse of time as a bar

35 * to the plaintiff's claim. And so far as these or any other allegations of any of these defendants may be understood to rely upon the fact, as stated by the defendant John M. Wyse, that the plaintiff Tessier received the bond in full satisfaction of his claim against the estate of the deceased, it is met, and so totally disproved by the testimony, that there is not left even a plausible pretext for any such defence to rest upon. But, it would seem to be intimated, by these allegations; and, perhaps, it was intended to be relied on as a defence, that, as the plaintiff Tessier