

[The facts in this case are sufficiently stated in the Chancellor's opinion.]

THE CHANCELLOR :

The questions now to be decided are stated in an agreement signed by the solicitors of the parties, and filed on the 18th of December last.

It appears, that on the 21st of October, 1835, the late James Cunningham and his wife conveyed to Henry Wayman three parcels of land, called "Latent Worth," "Glenn Eyery" and "Muddy Creek," upon certain trusts, as in the deed are set forth, that is to say, in trust, that Wayman and his heirs may in the first place, raise by sale of the same, or any part thereof, so much money as will be sufficient for the purposes of the trust; the said money to be applied to paying off the debts and responsibilities enumerated and provided for in the deed. These were *first* a debt of \$2000, to be created at the Frederick County Bank, for which Wayman was to become liable as Cunningham's surety. *Secondly*, to the payment of all other debts or liabilities of the said Cunningham, for which Wayman was in any manner responsible, and any money the latter might thereafter advance for, or on account of, said Cunningham. *Thirdly*, to pay all the debts of said Cunningham, at that time contracted, that Wayman might consider just, legal and equitable, and *Fourthly*, the expenses of the trust including a commission to the trustee, of six per cent. out of the whole amount of sales.

Cunningham and his wife died in or about the year 1837, and the trustee not having made sale of the property conveyed to him, a bill was filed by Gibbs and others, creditors of the deceased, in the year 1842, praying for a sale of the real estate of the deceased, for the payment of his debts, upon the ground that the personal estate was insufficient, and such insufficiency being established, a decree passed for a sale on the 13th of April, 1846, appointing a trustee for that purpose. The sale has been made and ratified, and the questions now presented have reference to the distribution of the proceeds.

Wayman, who was made a defendant to the bill, professes to