

I am of opinion, therefore, that the act of limitations is no bar to this claim as pleaded by the complainants, either as to the real or personal estate of William Spencer.

In further answer to this plea, the defendants contend, and with much force, that as the complainants read the credits endorsed on the contract between Isaac and William Spencer, for the purpose of getting the benefit of them, they are thereby precluded from relying upon the defence of limitations, the last of these credits being as late as January, 1822.

The *third* question presented by this record, and argued by the solicitors, has relation to a credit claimed by the defendants for moneys paid by them under the decree in the case of *Spencer vs. Pearce*, reported in 10 *Gill & Johns.*, 294. To this claim for a credit, so far as concerns the money received by the late William Spencer, the Chancellor understands there is no objection; but the complainants insist that no credit should be allowed for the amount which was lost by what is alleged to have been the neglect of Isaac Spencer and his representatives in suffering the land sold to Terry by William Spencer to remain in the possession of the former from 1822, when William Spencer bought it at the sheriff's sale, to 1839, when it was sold under the decree of the Court of Appeals.

The Chancellor has examined this question, and he thinks the defendants are not entitled to this credit. There was, in this respect, he thinks, a want of that diligence which a trustee is bound to exercise when he undertakes a trust. The cases referred to in 2 *Williams on Executors*, 1110, are believed to sustain this position.

The *fourth* question which I am called upon to decide is, whether Isaac Spencer is to be charged only with the \$5000 for which he sold what is called the "Crompton Estate," in September, 1831, or with \$10,000, which it is alleged he was offered or might have sold it for at an earlier period.

As however, the order which I am about to pass will direct the value of the estate after deducting the debts to be ascertained as of the year 1822, there does not appear to be any necessity for the expression of an opinion upon this point.