

10, and the case of *Hopkins vs. Frey*, 2 *Gill*, 359, and *Miller vs. Stump*, 3 *Gill*, 304.

GEO. H. STEUART, for Complainant.
McLEAN, for the Widow.

R. M. GIBBS AND OTHERS }
vs. } MARCH TERM, 1850.
CUNNINGHAM AND OTHERS. }

[EXTENT OF LIEN—LIMITATIONS—SET-OFF—PRACTICE.]

A DEED was executed in 1835, conveying certain lands, in trust, with power to the grantee to sell the same and apply the proceeds to pay, *first*—A specified debt. *Second*—All other debts of the grantor for which the grantee was responsible, and any advances the latter might make for the former. *Third*—All other debts of the grantor at that time contracted which the grantee might consider just, legal, and equitable, and *fourth*—The expenses of the trust. The grantor died in 1837, and the grantee not having sold the property, a bill was filed in 1842, by the creditors of the grantor, under which all his real estate was sold for the payment of his debts. HELD—

1st. That the grantee, by virtue of this deed, had a lien only on the land described in and conveyed by it, but he may show himself a creditor beyond the provisions of the deed, and in respect of any such claim he will stand upon an equality with the general creditors of the grantor.

2d. That the claims of the grantee within the terms of the deed, and with reference to the proceeds of the property thereby conveyed, are not liable to the plea of limitations, but with regard to the proceeds of any other property of the grantor they are so liable.

Claims due by a guardian for property which he received from the mother of his wards, cannot be set-off against claims due to the guardian by the estate of their father.

There must be reciprocity and mutuality in the right of set-off, and the demands on the one side and the other must be in the same right.

A defendant to a creditor's bill, though he does not in his answer distinctly allege himself to be a creditor, and though he asks in his answer, to be dismissed with costs, may still after decree come in upon the fund as a creditor.

As a general rule, if the infirmity of the plaintiff's case appears upon the face of his bill, the defendant may rely upon it at the hearing, no matter how imperfect, or what the character of his answer may be, and it is only with respect to some defences given by statute that a different rule prevails.