

insufficient, as it now appears to be upon the face of these proceedings.

But the proofs show that although the personal estate might originally have been more than sufficient to pay this debt, it has since, by some means or other, fallen greatly short. Admitting then that there has been a waste of the personal assets; do these heirs and next of kin stand here as persons having no interest in the personalty, or having no concern with this apparent misapplication of it? And has the conduct of the plaintiff Tessier, been such, that, the loss must fall entirely upon him?

It is clear that an account of an administrator passed by the Orphans' Court, must be received as *prima facie* evidence of the then truth of the facts stated in it, at least as against the administrator; and therefore it must be assumed, until the contrary is shewn, that the administratrix Rachel Wyse, on the 29th of June, 1816, had in her hands a sufficiency of assets to pay this debt. But the strongest proof which could be adduced of that fact, would not preclude her from shewing, in answer to the claim of a creditor, made at a subsequent period, that she had since disbursed

55 the whole amount, * then in her hands, in a due course of administration, so as to relieve herself from all liability. To discharge herself from all claims in respect of the assets thus admitted to have been in her hands, it certainly cannot be deemed to be incumbent upon her to do so by subsequent accounts passed by the Orphans' Court; it would be sufficient for her to shew, by any kind of legal proof that she had fully and properly administered the assets then on hand. There is here, however, no such proof of her having properly applied any portion of the assets held by her on the 29th of June, 1816. But all the peculiar circumstances of this case must be carefully considered in order to obtain a clear view of the manner in which the personal estate then in the hands of the administratrix Rachel Wyse, has been consumed and reduced to the amount now found in the hands of the administrator, *de bonis non*, Allender.

It appears, that the deceased debtor William Wyse, at the time of his death, was seised and possessed of a considerable real and personal estate, which passed into the hands of his widow as administratrix, and his eight children, now here as defendants, and who were his heirs and next of kin; most of whom were then under age, and all of whom have been maintained, and the minors educated, as we are left strongly to infer, from the estate by their mother and natural guardian, the administratrix; that the administratrix Rachel Wyse, with this defendant John M. Wyse, by their petition addressed to this Court, before the institution of this suit, stated, that the personal estate of the deceased was not sufficient to maintain and educate his children; and therefore they prayed to have the tract of land called Deer Park sold, as directed by him