

But in this case there is no creditor before the court, having a common interest with others, and resting his claim to relief on the ground of the insufficiency of the personal assets of the deceased; nor any one who can have any pretence whatever to be considered as having a right to be substituted for such a creditor. The prayer or recommendation of the administrator *Joshua Warfield* introduces to the court no such party; and the suggestion of the auditor is altogether unauthorized.

Whereupon it is *Ordered*, that the statement as made and reported by the auditor be and the same is hereby ratified and confirmed, and the trustee is directed to apply the proceeds accord-

had taken out the escheat warrant, made a party; but it appears, that on the same day the bill was filed, Hackett filed a petition, praying that he might be permitted to perfect his title; which, however, does not appear to have been in any way noticed by the Chancellor.

An order of publication was passed as required by the act of 1794, ch. 60, s. 6, and published accordingly: and the attorney-general having been served with a subpoena, appeared and answered. Upon which the case was submitted, and on the 8th of January, 1803, a decree for a sale in the usual form was passed, which directed notice to be given to the creditors of the deceased to bring in their claims, and a sale was made and reported accordingly.

7th June, 1804.—HANSON, *Chancellor*.—*Ordered*, that the sale made by James Houston, as stated in his report, of the real estate of William Biggs, be absolutely ratified and confirmed; several of the creditors of the said Biggs having by writing, expressed their approbation of the said rule. *Ordered*, likewise, that the said trustee, for his whole trouble and expense incurred in the execution of his trust, be allowed the sum of £37 10s. 0d. Let the auditor of this court state the application of the money arising from the said sale, allowing the said commission and costs of suit, to be taxed by the register.

Under the notice to creditors to bring in their claims, Elizabeth Hopkins and Joseph George, with nineteen others, brought in their claims; amongst whom the auditor made and reported a distribution of the proceeds of the sale, as directed. The act of 1785, ch. 78, directs, in cases of this kind, that if the proceeds of the sale be 'not sufficient to pay the whole debts, the money arising from such sale to be equally distributed among the creditors in proportion to their debts, *without any preference*.'

7th September, 1805.—HANSON, *Chancellor*.—*Ordered*, that the principal money arising from the sale of the real estate of William Biggs, be applied according to the auditor's statement; and that the receipt in writing, of any person entitled agreeably to the said statement, shall be admitted, so far as the said person is entitled, in the room of so much money directed to be brought in by the original decree—and that any money paid or to be paid by the purchaser for interest, shall be divided in due proportion, amongst the persons entitled, agreeably to the said statement, to the principal.

Each creditor obtained his dividend of the proceeds of sale as of course, leaving a balance still due to Hopkins and George, for which the plaintiffs were liable to them as sureties.