

This direction applies to claim No. 52, which must be rejected, because it has not been shewn whether the late *Thomas Tongue* was principal or surety; and to claim No. 90, which must be allowed, because the necessary explanation has been given.

I am of opinion that the affidavit of the claimant himself is sufficient proof of the loss of the original bill obligatory on which the claim No. 4 is founded; and that the production of a copy, so proved, as in this instance, with the other testimonials thereto annexed, amount to a sufficient authentication of the claim, according to the act of Assembly. (s) The claim No. 4 must therefore be allowed.

It is an established rule, that no claim can be allowed which did not exist, as such, against the deceased himself, in his life-time. Upon this ground claim No. 123 must be rejected; and claim No. 47, as stated by the auditor, is also clearly inadmissible.

It appears from the auditor's second report, that sundry claims have been withdrawn and re-stated. It is a rule in suits of this kind, that every creditor who comes in after the institution of the suit, on petition, or by filing the voucher of his claim, is allowed to take the position of a plaintiff as fully, as regards his interest, as if he alone had filed the bill. And therefore, upon the ground that a plaintiff may be allowed to amend his bill; so a creditor may be permitted to withdraw his claim for the purpose of having it re-stated in a more correct form; but then, upon the principles in relation to amending a bill, according to which the amended bill is a virtual admission of the informality or invalidity of the plaintiff's claim, as set forth in the original bill, so the re-statement must be considered as an implied abandonment of the claim in the form in which it was first stated. (t) This direction applies to the claims re-stated as from No. 152 to 158 inclusive, which now stand for adjudication only as they have been so re-stated.

In cases of this kind, it is the course of the court to allow a reasonable time after the auditor has reported a statement of the claims, for the creditors and parties to make a general scrutiny into the proposed distribution and its several parts; to take exceptions; to remove objections; or to produce further proof in support of their respective claims and pretensions. This reasonable time is, however, always estimated with reference to the time limited for creditors to bring in their claims, and to the time when the audi-

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(s) 1798, ch. 101, sub ch. 9, s. 4.—(t) *Lindsay v. Lynch*, 2 Scho. & Lefr. 9.