

On the 28th of May, 1831, Joseph Allen filed an exception to the auditor's report, because he had rejected his Allen's claim No. 4. And on the same day, Mary A. Allen, John Collinson, Gideon G. Tongue, Rezin Estep, Harriet Waters, and Elizabeth Allen, excepted to the auditor's report, because he had not allowed their claims No. 5, 22, 29, 35, 153, and 154.

BLAND, C., 6th June, 1831.—This case standing ready for hearing on the several reports of the auditor, and the * exceptions
352 thereto, the solicitors were heard for and against several of the claims; and the proceedings read and considered.

It appears from the auditor's statements, that he makes frequent reference to certain dividends which some of the creditors had obtained from the personal estate; and it is also stated by the auditor, that from the list, filed by the defendants, of the debts due to the late Thomas Tongue, it appears, that there are accounts which are relied on as discounts in bar of many of the claims. These circumstances very strongly shew the propriety and utility of passing a decree to account against the executor or administrator in all cases where it is alleged and shewn, that there is any personal estate which had been or might be distributed in satisfaction of those creditors who then claimed payment from the proceeds of the realty.

Where there has been, or is then no administration, because of there being no assets, there is no personal representative of the deceased debtor to bring before the Court for any purpose. And where the personal estate had been confessedly altogether taken up in making entire satisfaction of some claims, without any proportional distribution among any, it would be idle and unnecessary to call on the executor or administrator to account. But where, as in this instance, it appears, that there had been a distribution of the personalty among the creditors in partial payments; or where there are some personal assets still to be administered, there should be a decree to account against the executor or administrator for his own protection, to save him from being unjustly charged by any creditor whose claim had not been passed upon by this Court; and also for the benefit of creditors to force the executor or administrator to account for the whole of the assets which had come to his hands; and to prevent any one creditor from obtaining more than a due proportion of satisfaction from the whole estate of the deceased; and also to relieve the heirs or devisees from every portion of the burthen which should be borne by the personal estate as the natural fund for the payment of debts. For these reasons the whole estate, personal as well as real, should be brought before the Court, by a decree to account against the executor or administrator, which in this case has been very improperly omitted, as well as by a decree for a sale of the realty.