

The *fifth* and last question relates to the mode in which the value of the estate is to be ascertained.

My opinion is that the nearest approximation to the justice of the case will be attained by making an average of the testimony of the various witnesses who have testified upon the subject, and that mode will accordingly be adopted by the Auditor in taking the account which will be directed.

The defendants' counsel have insisted very strenuously that inasmuch as it is apparent (as they say) that the entire estate was inadequate to pay the debts at the death of William Spencer, no account should be ordered.

But the Chancellor has not the materials before him upon which he can safely rest a judgment upon this subject, and the case must, therefore, go to the Auditor for the purpose of stating such account or accounts as may be required to present the case in a form for final decision.

Since the argument in this case, the administrator of Jervis William Spencer has been made a party in conformity with the suggestion of the court, made shortly afterwards.

This case standing ready for hearing, and having been argued by the solicitors of the parties, the proceedings have been read and considered, and for the reasons stated, the Chancellor is of opinion that the cause must be referred to the Auditor, with directions to state such account or accounts as may be necessary to exhibit the rights of the parties, as those rights are herein adjudged by the court, and may appear by the evidence.

It is, thereupon, this 16th day of November, in the year 1847, ordered and adjudged that this cause be, and the same is hereby referred to the Auditor, with directions to state an account or accounts, according to the following directions, that is to say, he will ascertain the value of the estate of the late William Spencer, real, personal and mixed, which came to the hands of his executor and trustee, the late Isaac Spencer, at the period of the death of the said William, in the year 1822. This ascertainment is to be made by an average of the evidence of the several witnesses who have testified upon the subject.

The Auditor will also ascertain from the proof the amount