

other claims are all objected to for want of proof, and are not legally proved. The Statute of Limitations is also relied on against them, and is a bar, and there seems to be no objection to a confirmation of the Auditor's report and accounts.

But since the statement of the account, the trustee has died, and the administrator is brought into court on a petition, and required to bring into court the purchase money received by the trustee or by himself. There would be no difficulty in ordering the trustee to do so were he alive, nor in requiring the same of the executor if he admitted, or it was proved that he had received it, or that it was in his possession as administrator sufficiently identified, or that he had sufficient assets of the testator in his hands. There is neither allegation, admission or proof of the first two, nor as it appears to me, of the last. There is certainly no allegation in the petition that the executor has sufficient assets, nor is there any proof taken in reference to them.

The executor, by his answer, denies that he has any cash assets whatever, and does not admit that he has any other, or to what amount. It is, therefore, this 20th day of June, 1848, adjudged and ordered, that the Auditor's report and account, filed March 4th, 1846, be, and the same is hereby ratified and confirmed, and the petitioner has leave to amend his petition if he think proper, so as to make a sufficient case against the executor, and establish it by proof, or his petition must be dismissed.

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[In pursuance of this order, the heirs at law amended their petition against Dent, the executor of the deceased trustee, Brawner, charging that Brawner left assets which have come to the hands of said Dent, as executor, greatly more than sufficient to pay all the debts and liabilities of every kind due by Brawner; that Dent, as such executor, has sold large amounts of property, and received large sums of money for the same, which he now has in his hands, and that he has cash and other assets more than sufficient to meet the petitioners' claims due by said Brawner, but all other claims against him. The peti-