

in any way. Upon these answers, and exhibits filed therewith, the Judge delivered the following opinion.]

OPINION BY JUDGE BREWER :

Since the order of the 20th of June, 1848, the petition of the heirs of Isaac Maddox has been, in part, amended, in pursuance of that order, an answer and amended answer of Henry W. Dent, executor of James Brawner, filed thereto, some testimony taken, and the case again argued.

The first objection of the defendant is to the form of the proceeding. They say that the petitioners should have filed an original bill, and that the executor of James Brawner cannot be made to account for the assets of the deceased on a mere petition, because it would be necessary to call in all the creditors by notice, and settle the whole estate. In 3 *Bland's Ch. Rep.*, 284, the Chancellor says, on a similar petition, that the trustee may be ordered to bring the money into court, and so may his administrator, if he have received any part of the purchase money, and also may be required to account. And there is no reason why he should not. The parties interested cannot well ascertain who has received the purchase money, or what part, or how it has been applied, without calling upon the administrator, who has all the trustee's papers. The power to bring him in for that purpose is admitted, and as he may have nothing of that fund in his hands, and may have assets, it is a very convenient practice to frame the petition with that aspect also, that if the petitioner cannot lay hold of that fund he may in the same proceeding recover his claim from the general assets of the trustee, in case he has received and misapplied it. The defendant answers on oath, and the same effect is given to his answer as if it were to a bill. Testimony may be taken as conveniently, notice given to creditors, and the whole estate administered as well as on an original bill.

Another objection is, "that there is neither allegation or proof that the trustee ever received the purchase money." There is certainly no allegation to that effect in any of the petitions filed. The petitioners, defendants and the court, all seem to have