

## DORSEY v. HAMMOND.

The auditor is a ministerial officer of the court. The general character and nature of his duties. His fees, being a part of the costs, the payment of them may be enforced, in a summary way, like costs. Statements may be made by the auditor for the parties with or without the directions of the Chancellor.

The mode in which creditors are made to contribute to a creditors' suit.

In a creditors' suit the proceeds of the realty are to be distributed in the same order among creditors in which the personalty is to be distributed among those only whose claims have been so avouched as to authorize the Orphans Court to allow of their payment.

A claim may be contested so as to put the claimant to full proof; in which case if it be not legally established it must be rejected.

A judgment against an executor or administrator is no evidence against the heirs; against whom the claim must be authenticated as if no such judgment existed.

An absolute judgment against an executor or administrator is conclusive evidence against him of a sufficiency of personal assets in his hands.

After a claim has been decided upon, it cannot be again brought before the court in a different shape; except under such circumstances as would form a sufficient foundation for a bill of review, or a re-hearing.

This was a creditors' bill filed on the 13th of December, 1826, by *John W. Dorsey* against *Rezin Hammond*, the executor, and *Denton Hammond*, *Matthias Hammond*, and *Caroline B. Hammond*, infants and devisees of the late *Matthias Hammond*.

The bill states, that the deceased being indebted to the plaintiff, he had brought suit and recovered judgment against his executor the defendant *Rezin Hammond*, from whom he, the plaintiff, had received payments, leaving a balance due him of \$3182 49; that the testator had died seized of a large real estate which he had devised to the infant defendants; and, that the whole of his personal estate had been exhausted and disposed of in payment of his debts. Whereupon the plaintiff prayed, that the real estate might be sold to satisfy the balance due him, and such other of the creditors of the deceased as should come in under this suit. The defendants by their answers admitted the facts set forth in the bill; and on the 19th of March 1827 it was *decreed*, that the real estate be sold, and that notice be given to the creditors of the deceased to file their claims in the chancery office within four months after the day of sale.

After which, on the representation of the trustee, that there was a large body of land, embraced by the decree, which it was thought most advisable to have laid off into lots and offered for sale in parcels, it was, on the 9th of May 1827, ordered that the surveyor