

According to the rule of this Court, where the deceased, with others, appears to have been jointly bound for the payment of the claim, the creditor must explain the apparent ambiguity, or he will be altogether excluded. He must shew that the deceased was the principal debtor, in which case he will be permitted to come in for the whole amount; or that the deceased was a co-obligor, in which case the creditor will be allowed to claim no more than half; unless he also shews that the other obligor is insolvent; or if the deceased was only a surety, then the creditor must shew that the principal is insolvent. *Watkins v. Worthington, 2 Bland, 509.*

359 *This direction applied to claim No. 52, which must be rejected, because it has not been shewn whether the late Thomas Tongue was principal or surety; and to claim No. 90, which must be allowed, because the necessary explanation has been given.

I am of opinion that the affidavit of the claimant himself is sufficient proof of the loss of the original bill obligatory on which the claim No. 4 is founded; and that the production of a copy, so proved, as in this instance, with the other testimonials thereto annexed, amount to a sufficient authentication of the claim, according to the Act of Assembly. 1798, ch. 101, sub-ch. 9, s. 4. The claim No. 4 must therefore be allowed.

It is an established rule, that no claim can be allowed which did not exist, as such, against the deceased himself, in his life-time. Upon this ground claim No. 123 must be rejected; and claim No. 47, as stated by the auditor, is also clearly inadmissible.

It appears from the author's second report, that sundry claims have been withdrawn and restated. It is a rule in suits of this kind, that every creditor who comes in after the institution of the suit, on petition, or by filing the voucher of his claim, is allowed to take the position of a plaintiff as fully, as regards his interest, as if he alone had filed the bill. And therefore, upon the ground that a plaintiff may be allowed to amend his bill; so a creditor may be permitted to withdraw his claim for the purpose of having it restated in a more correct form; but then, upon the principles in relation to amending a bill, according to which the amended bill is a virtual admission of the informality or invalidity of the plaintiff's claim, as set forth in the original bill, so the restatement must be considered as an implied abandonment of the claim in the form in which it was first stated. *Lindsay v. Lynch, 2 Scho. & Lefr. 9.* This direction applies to the claims restated as from No. 152 to 158 inclusive, which now stand for adjudication only as they have been so restated.

In cases of this kind, it is the course of the Court to allow a reasonable time after the auditor has reported a statement of the claims, for the creditors and parties to make a general scrutiny into the proposed distribution and its several parts; to take excep-