

ment had been made by Thomas T. Wheeler with his representatives, dated 3d November, 1842, by which, for a valuable consideration, he released them from all liability on account thereof, and agreed to indemnify them for any loss by reason of the same, "provided always that the said Thomas T. Wheeler shall have full power and authority to defend any suit at law or in equity, which may be instituted against the representatives or heirs of the said Odel, or either of them, on account of the said single bill."

Upon this agreement the Auditor gave Hilleary the benefit of the lien of the judgment, charging him with only one-third, and the proceeds of Wheeler's property with two-thirds.

By his statement, there appeared to be due on the judgment after crediting all payments up to the time of the payment in full by Hilleary, the sum of \$2329 52, to which was added so much as he had paid over and above his one-third, with interest thereon to the day of sale, making the sum of \$2880 27, less than the whole amount of the judgment, principal and interest, without the credits on account of the payments made by Wheeler and Thomas Hilleary, deceased. It was intended by the complainant, that by this statement, Hilleary would receive, even on the hypothesis that Wheeler's estate was responsible for two-thirds, the sum of \$428 14 more than he was entitled to. The original debt being \$1800, with interest from the 17th March, 1825, Thomas Hilleary paid \$570, on the 7th of May, 1829, the costs being then \$17 97. On the 28th November, 1837, additional costs amounting to \$5 31, having been incurred, John H. Hilleary, the claimant, paid \$600, and on the 2d April, 1836, Wheeler paid \$300. Additional costs, amounting to \$12 08, were afterwards incurred, and Wheeler paid 12th December, 1845, \$250.

The complainant excepted to the Auditor's report.

1st. Because compound interest was in effect allowed, and the estate of Wheeler was at the farthest only bound for two-thirds of the original debt and interest.

2d. Because the judgment was improperly allowed as a lien.

3d. Because Wheeler was only bound for one-third.