

by him.(d) The auditor is allowed by law \$4 67 per day for every day he shall reasonably be employed in stating any account; which, by long established usage, has been construed to mean an allowance of that fee for every account, however short it may be. In this case the auditor has already stated two accounts, for each of which he has been allowed that fee; but in the most difficult cases, and where a statement and distribution are required to be made, among a great multitude of claimants, his fees have rarely altogether exceeded one hundred dollars in any one case.

Under a creditors' bill it is a rule, that all costs, including the expenses of the sale; the survey, if any be ordered, or required, either to lay off the land into lots, as in this instance, or to ascertain the quantity sold, where the estate has been sold by the acre; and all taxes, are to be first paid from the proceeds of sale; and the balance only rateably distributed among the creditors, who are, in that way, made to contribute in due proportion to defray the expense of the suit.(e) Yet, according to the course of the court, any other creditors may be allowed to come in, at any time, before a final account has been stated and ratified, and before the court has actually parted with the fund; but if, in order to give them a dividend, after the auditor has made his report, it is necessary to re-state the account; as it is made for their benefit exclusively, the costs of the re-statement are deducted from the dividends allotted to them as the terms upon which alone they can be allowed to come in and participate.(f) But this rule applies only where the proceeds of sale are insufficient to pay all, as in this instance; for if there be a surplus, there can be no reason why it should not be applied, as against the heirs or devisees, in full satisfaction of the principal, interest and costs of a just debt, to which they can make no well grounded objection.(g)

(d) *Denny v. Norwood*, MS. 1806; *Denny v. Wallace & Davidson*, MS. 1806.

(e) *Hare v. Rose*, 2 Ves. 558; *Shortley v. Selby*, 5 Mad. 447; *Bluett v. Jessop*, Jac. Rep. 243.—(f) 2 Fow. Ex. Pra. 279, 254; *Angell v. Haddon*, 1 Mad. Rep. 528.

(g) *Bromley v. Goodere*, 1 Atk. 75; *Butcher v. Churchill*, 14 Ves. 573; *Ex parte Mills*, 2 Ves. jun. 295; *Ex parte Hankey*, 3 Bro. C. C. 504; *Ex parte Deey*, 2 Ball & B. 77; *Tyson v. Hollingsworth*, MS. 12th July 1808.

*Low v. CONNER*.—This was a creditors' petition, filed 22d February 1790, praying, that the lands of James Conner might be sold to pay his debts, for which his personal estate was insufficient. 1st September, 1791, decree for a sale in the usual form. Sale made and reported. 4th March 1792, ordered, that the return of Joshua Townshend, trustee for the sale of the real estate of James Conner, this day made be approved; and that his proceedings and the sale by him made be approved, ratified and confirmed, unless cause to the contrary be shewn on or before the fourth day of