

In this case the *opponent Welch*, by his bill, filed on the 2d of August, 1827, averred that this claim, which he called into court, had been paid; and the *claimant Stockett*, by his answer, filed on the 19th of October, 1827, denied that allegation. The parties were thus at issue upon the fact of payment, which the *opponent* has failed to sustain by any proof whatever. After which, and all the intermediate proceedings in the case, it certainly could not now be in order, or consistent with a well regulated administration of justice to permit this *opponent* to abandon that issue, and so late as the 29th of June last, to make up another issue, and to present a new defence against this claim, founded on the statute of limitations. (i)

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Brookes and Sophia Brookes her children, both infants under the age of twenty-one years, objects to the allowance by the auditor of the claim against the said real estate by the executrix of Stephen West, for the following reasons: 1st, it appears that the account commences with a charge of £28 19s. 0d. on the 6th of April, 1756, which note is also exhibited, and is without seal. That although credits are given as far as the year 1776, yet that the account stops there, and no steps appear to have been taken to obtain payment of the balance, if any was due; which from the length of time furnishes a strong presumption that no balance was due; and she pleads and relies on the length of time as a bar to the said claim. 2d. That a suit is now pending in Prince George's county court, against the said Sarah Brookes as executrix of Benjamin Brookes for the same claim, to which she has pleaded the act of limitations, and which has been laid before the auditor, under the act of 1785, ch. 80, and is not yet reported on, which she is ready to make appear; and 3d, That the probate of H. West, the executrix is not sufficient, and not such as the law requires.

27th May, 1803.—HANSON, *Chancellor*.—Ordered, that the Chancellor, on application, at any time after the first day of October next, will proceed to decide on the claim of Stephen West's executor against Benjamin Brookes deceased; provided a copy of this order be served on Hannah West, or Richard Ridgely, her solicitor, in case she cannot conveniently be therewith served, before the first day of July next. Ordered likewise, that depositions taken before a single magistrate, on two days notice, in case it can conveniently be served, or without notice, in case it cannot be so served, shall be received as evidence on the trial of the said claim.

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After which the case was again brought before the court as to other claims.

18th July, 1803.—HANSON, *Chancellor*.—Let the auditor state the proportions which each creditor of Benjamin Brookes is entitled to of the money arising from the sale of the real estate of said Brookes, deducting the commission of £75, and costs of suit, the state being entitled to a preference. He is to state the proportion of Stephen West, although his claim is disputed; the object of stating the proportions being, that an order may be passed for paying each claimant, except the said West, immediately. The said West's claim is, agreeably to the order of 27th May, 1803, to be decided on after the first day of October next.