But it is said to be an established principle of this Court, that where it appears, upon the face of the voucher, that the creditor may or can obtain payment, by pursuing another and more proper person or fund, he shall not be permitted to come here, and partake of the realty to the prejudice of the heir or of other creditors. It is upon this ground, that an obligee is turned aside to seek payment of the whole or a proportion from a principal, or a co-surety who is solvent. These creditors have established their claims as against the personalty, or natural fund, of the sufficiency of which to satisfy them, their judgments afford conclusive evidence. If they now leave it and obtain satisfaction from the realty, what is to become of the amount of personalty which their judgments prove to exist in the hands of the executors? Is the executor to be suffered to retain it, or is the heir to be allowed, upon the principle of substitution, to obtain it? But the demand of a creditor upon the heir is always and must necessarily be founded upon the fact, that the personalty is not sufficient to satisfy the claim. These considerations have convinced me, that the auditor's objection is correct, and that these * claims Nos. 3,
473 4, and 5, ought not to be allowed to partake of the proceeds of the realty.

Whereupon it is ordered, that the said claims, designated by the auditor as Nos. 3, 4, and 5, be and the same are hereby rejected. And the auditor is directed to re-state the account accordingly.

George Barber, whose claim had been stated as No. 3, and Charles Waters, whose claim had been stated as Nos. 4 and 5, filed their several petitions, on the 7th of July, 1828, without oath, in which they alike state, that it was in their power to show, by evidence not now in the proceedings, that the personal estate of the deceased had been exhausted in the payment of other just debts; that the executor was insolvent; and that his sureties might be relieved in equity. Whereupon they prayed, that they might be allowed to adduce further proof, and that the order of the 22nd of March might be rescinded, &c.

BLAND, C., 8th July, 1828.—These petitions do not allege, that there is any error apparent upon the face of the decision of the Court; nor do they set forth and aver, that the petitioners have discovered any new testimony, not known to them at the time the opinion of the Court was delivered; consequently, independently of the want of any affidavit to their petitions, they have laid no foundation for a bill of review, even if they had asked leave to file such a bill; or this were a case in which such a form of proceeding, or something equivalent to it, would be proper. Nor is it stated in these petitions, that there has been any mistake, oversight, or