

and have his claim allowed and paid out of the whole or the surplus of the proceeds of the realty of the deceased * so far as
478 they will go; considering the surplus as a residuum of the real assets which had been taken from the hands of the heirs. But such petitioning creditor will be required to establish his claim; to show, by the usual proofs or admissions of the party, the

entitled. Prayer to take testimony to substantiate these facts; that the trustee be ordered to pay over to him such proportion as he is entitled to receive of the proceeds of the real estate; and for such other relief, &c.

KILTY, C., 1st October, 1812.—On the above application it is ordered, that depositions in Ann Arundel County, taken on three days' notice to the trustee or to the petitioner, be received in evidence on the hearing.

Ann Spurrier by petition stated, that she was the widow of the intestate; that there was a large surplus to be distributed among the heirs of the deceased, four of whom are minors, who reside with her, as their mother and natural guardian; that she is unable to maintain them; and is willing to give bond, as guardian, for any share which may be ordered to be paid to her for them. Prayer that the surplus may be distributed; and that the shares of the minors be paid to her.

KILTY, C., 28th January, 1813.—On the application of the heirs for a distribution of the proceeds, it is ordered, that the claims be reported by the auditor on the 10th day of March next on the proof then exhibited, for the final decision of the Court, when the petition of Roderick Warfield will also be acted on. A copy of this order to be inserted three weeks in the Maryland Republican.

On the 10th March, 1813, the auditor reported, that at the request of the trustee, and in obedience to the Chancellor's order of the 28th January, 1813, he had stated all the claims exhibited since the last report of the late auditor. And among other things he says, "The claim No. 37 appears to be a judgment in favor of Thomas Cumming on the joint and several bond of the deceased and one John Cumming, and at the request of the trustee the auditor has stated, as part of the claim, the costs of the deceased as defendant as well as the plaintiff's costs, the whole amount as stated having been paid by the said trustee; and the said whole amount so stated is admitted in writing to be a just claim against the deceased's estate by his eldest son, who admits also that the other obligor John Cumming is insolvent. The said claim is moreover accompanied by a certificate of John Purviance, Esq'r, as counsel for the plaintiff, that no part thereof has been received, except what is credited. No authentic certificate, however, is produced of the said John Cumming's discharge under the insolvent law; supposing him to be the principal in the bond on which the judgment was rendered. No proof that the said John Cumming was security only. And no affidavit, that the said judgment has been fully discharged.

KILTY, C., 13th March, 1813.—Considering the report and statements by the auditor and the evidence adduced, it is ordered, that all the claims, as stated, be allowed; except the last, being the claim of T. Watkins, which is rejected. The auditor, in stating the account with the trustee, will allot a share to Roderick Warfield, which will be subject to the order of the Chan-