

But in this case there is no creditor before the Court, having a common interest with others, and resting his claim to relief on the ground of the insufficiency of the personal assets of the deceased; nor any one who can have any pretence whatever to be considered as having a right to be substituted for such a creditor. The prayer or recommendation of the administrator Joshua Warfield introduces to the Court no such party; and the suggestion of the auditor is altogether unauthorized.

Whereupon it is ordered, that the statement as made and reported by the auditor be and the same is hereby ratified and confirmed, and the trustee is directed to apply the proceeds accordingly, *with a due proportion of interest that has been or **247** may be received.

William Gaither and Joshua Warfield, for themselves and in behalf of the other creditors of Nicholas Welch, deceased, on the 25th of August, 1829, filed their petition in this case, in which they stated, that the late Nicholas Welch, being indebted to Gaither, died leaving real and personal estate; that administration having been granted on the personal estate of the late Nicholas to the petitioner Joshua Warfield, he, Gaither, sued Joshua, and obtained an absolute judgment against him; and that Joshua being also the surety of the late Nicholas, he, Gaither, had moreover sued and obtained a judgment against him on that ground. Upon which it was prayed that the petitioners might be allowed to come in as creditors, &c.

BLAND, C., 26th August, 1829.—The case with this petition having been submitted without remark the proceedings were read and considered.

It is admitted, that the judgments which this petitioning creditor Gaither recovered against the administrator of the late Nicholas Welch were absolute. This admission is alone sufficient to preclude him from any claim upon the real assets in the hands of the heirs of the deceased debtor; because, such judgments are conclusive evidence of a sufficiency of personal assets in the hands of the administrator to satisfy the claim. And that too as well between such creditor and the heirs of the deceased debtor, as between such creditor and the administrator of the deceased debtor. Because, if, notwithstanding such a judgment, the creditor were allowed to recover against the heir, leaving the judg-

interest, shall be divided in due proportion, amongst the persons entitled agreeably to the said statement, to the principal.

Each creditor obtained his dividend of the proceeds of sale as of course, leaving a balance still due to Hopkins and George, for which the plaintiffs were liable to them as sureties.