

commissioners give notice, as usual, to the opposite party, of the time and place of taking the said testimony. And it is further ordered, that the register issue an attachment as prayed to enforce obedience to this order.

After which, these witnesses attended, their depositions were taken, and the commission was returned, together with their and other testimony. Upon which the case was heard; and on the 30th of April, 1833, it was decreed, that the administrator should pay to the plaintiff the balance of the purchase money, other than that due upon the bond, &c.

THE BANK v. DUGAN.

CHANCERY PRACTICE.—CREDITORS' SUIT.—PRODUCING BOOKS.—OVERRULING PLEA.

A creditor's suit against an executor alone.

A creditor permitted to come in, on petition, before the defendant had answered.

Where a plaintiff has an interest in books, which the defendant admits to be in his possession, he may be ordered to produce them; but they must be called for by petition, not by way of exception to the defendant's answer.

The answer overrules the plea.

The plea being overruled, the defendant was ordered to pay the costs. (a)

THIS bill was filed on the 22nd of May, 1829, by The President and Directors of the Bank of Maryland against Cumberland Dugan, surviving executor of James Clarke, deceased. The bill charged, that the executors of the deceased by their improper, negligent, and illegal conduct had so managed the assets of the deceased, that a large amount of them had been wasted; in consequence of which his creditors had not been paid. Whereupon *it was prayed, that, for the benefit of themselves and the other **255** creditors of the deceased who might be permitted to come in, the surviving executor might be ordered to account; that the creditors might be paid, &c.

After which Elizabeth Blair, executrix of William Blair, deceased, by her petition stated, that she had, at September Term, 1824, of Baltimore County Court, recovered a judgment against the executors of Clarke for the sum of \$1,000, with interest from the 23rd of May, 1814, and costs, to bind assets; which debt had not been paid. Whereupon she prayed to be admitted to come

(a) Cited in *Seebold v. Lockner*, 30 Md. 137.