

Hammond, deceased, it was obviously liable to abate by the death of any one of them, whose interest did not survive or fall into the common stock for the benefit of any one or all of the others; although as regarded the creditors of the deceased, it was to be treated as a mere creditor's suit. Therefore, on the death of the plaintiff Philip Hammond, the surviving plaintiffs filed a supplemental bill of revivor against his widow Juliana Hammond, and his infant children Philip Hammond, Marianna Hammond, Harriet Hammond, Edward Hammond, and Cecelia Hammond; who all answered and admitted the facts as stated in the bill.

The auditor reported, that in consequence of the imperfect state of the accounts and vouchers of the defendant Rezin, who was one of the executors, he had taken unusual pains to prepare his account; that he, the auditor, had made a statement, to make a report of which to the Court, the affidavit of Rezin was necessary; that several days had been appointed for him to appear and verify the statement; but he had failed to do so; from which, and his conduct the auditor alleged, that he was convinced he should be unable to report any account unless Rezin should be compelled to attend.

BLAND, C., 8th August, 1829.—It having been made the duty of the auditor to state such accounts as the Chancellor may direct; and as he has, for that purpose, been clothed with authority to administer an oath to all witnesses and persons proper to be examined upon such accounts; 1785, ch. 72, s. 17; it necessarily follows, that, here as in England on a reference to a master, where an *executor, as in this instance, or other party has been decreed or ordered to account, he may be called before the **311** auditor and examined on oath upon interrogatories in relation to such account. The answers of a party to interrogatories being, in such case, considered in the nature of an answer to the bill, may, in the same way, be excepted to for insufficiency. And such party may be compelled by attachment, if necessary, to attend before the auditor, and to answer as required. 2 *Foucl. Exch. Prac.* 241; 1 *Newl. Chan. Prac.* 325.

Ordered, that the said Rezin Hammond forthwith attend before the auditor, and give such information and testimony, or make such affidavit as may be deemed pertinent and necessary to enable the auditor to state such an account as he has been directed to state, or the nature of the case may require; provided; that a copy of this order be served on the said Rezin Hammond.

The auditor on the 25th of August, 1829, filed his report of the accounts which he had stated in obedience to the decree of the 27th of August, 1828, in which he set forth, that the overpayments of Charles, Thomas and Elizabeth, amounted together to