

the deed of trust, some of which claims are those which have been assigned to the plaintiff Welch; that the late David Stewart died seized and possessed of other property, not so specially appropriated; and that his whole estate, both real and personal, was insufficient to pay his debts. The heirs, administrator and trustee, who were all made defendants, by their answers, admitted the truth of the allegations of the bill. Whereupon it was decreed, that the estate be sold; that notice be given to the creditors of the deceased to come in; and that the administrator account. The property was accordingly sold. After which, on the 4th of December, 1828, Evans and others, filed their petition, stating that they also were creditors of the deceased; and that they objected to the allowance of certain claims of the plaintiff Welch.

The auditor, on the 4th of February, 1829, reported a statement of the claims of the plaintiffs, and others who had come in as creditors of the deceased. Evans and others excepted to the account allowing the plaintiff Welch's claims, Nos. 1, 2 and 5; because they had not been established by any evidence, as against them and others, the creditors of the late David Stewart; and for these reasons they, in like manner, objected to the allowance of the \* plaintiff Welch's claim No. 3; and also, because it was not mentioned or demanded in the bill in any form what-  
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ever.

BLAND, C., 16th March, 1829.—The exceptions to the auditor's report standing ready for hearing, and the solicitors of the parties having been heard, the proceedings were read and considered.

I take it to be a well settled rule of this Court, that on a creditor's bill, the decree for a sale, in the usual general terms, virtually and necessarily establishes the claims of all the originally suing creditors, unless some of them should, by the decree itself, be specially excepted; since it is very clear, that no sale can be ordered, but to pay some one or more debts which have been established to the satisfaction of the Chancellor. *Strike's Case*, 1 Bland, 70; *Williamson v. Wilson*, 1 Bland, 441. But such a decree only establishes the claim of the plaintiff as a debt due from the estate of the deceased debtor, without prejudice to third persons, and consequently, if any others, who may have been allowed to come in as parties to the suit, can shew fraud or any other circumstance by which it shall appear that the debt, as so far established, ought not to be permitted to stand in the way of their interests, it may be then shewn and taken advantage of; because the introduction and reliance upon any such new and collateral matter is not in any way incompatible with an admission of the stability of any of those points which had been previously adjudicated upon and determined by the decree.