

well as himself, I would not be understood as going so far as to determine, that it should have the effect of depriving him of any other mode of relief to which he may have recourse. Such omitted claim may be founded on a judgment, as in this instance of claim No. 3, or upon a mortgage, in which case, I am not now prepared to say, that its not having been demanded in the bill would have the effect of depriving the claimant of his general or specific lien.

*Whereupon, it is ordered, that the exceptions to the claims Nos. 1, 2 and 5 are hereby overruled; but, that in so far as the said exceptions are directed against claim No. 3, exclusively, they are sustained, and that claim is hereby rejected; but without prejudice. And the auditor, in making a distribution of the trust fund, and of the surplus of that fund, together with the proceeds of the deceased's estate, will be governed by the principles herein before laid down and explained. **40**

After which, some other claims were brought in, among which was one filed on the 11th of June, 1829, by Joseph N. Stockett, administrator *de bonis non*, with the will annexed of John Stockett, deceased, for the sum of \$300, admitted to be due by the deed of trust, with interest from the 12th of June, 1812. To the allowance of which, the plaintiff Welch objected, that it was not proved in the manner required by law, and the practice of the Court; and he also plead the Act of Limitations as a bar; and relied on the lapse of time as evidence of payment.

BLAND, C., 10th August, 1829.—This case having been again brought before the Court to obtain an order for a final audit; and the solicitors of the parties having submitted the matter, so far as they were concerned, on notes, the proceedings were read and considered.

The order of the 16th of March last, having made only a partial adjustment of this case preparatory to a final audit, it remains, in connection with that order, to dispose of the residue of the now controverted or neglected claims, which have been heretofore introduced into the case.

The claim of Joseph N. Stockett, as administrator, *de bonis non* of John Stockett, deceased, stated in the auditor's report filed on the 4th of February last, as claim No. 7, has been admitted, provided for, and secured by the deed of trust mentioned in the bill; and therefore, must now be permitted to take the grade and stand of preference, allowed to all the other claims coming in under that deed; unless it can be pushed from its position by one or other of the points pressed against it. It is alleged to have been paid. There is, however, no proof of any payment, and, therefore, that point must be thrown aside, as having entirely failed for the direct