order in equity, although a large part of such amount should be constituted of costs; *Bodily* v. *Billamy*, 2 *Burr.* 1094; *Bickham* v. *Cross*,

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James Pattison's executor, the parties to the dispute are considered to be Jacob Pattison, the said executor, and the said John A. Frazier.

Without taking any testimony under this order, the claim was afterwards brought before the Court upon the proceedings and proofs in the case.

HANSON, C., 13th August, 1799.—This is an account drawn up by the claimant's solicitor, and not sworn to by the claimant, as unquestionably it ought to have been, if it was expected to be passed. His death has now made it impossible to have such an oath, and the solicitor relies on the testimony obtained on a commission between James Pattison and the said claimant, which issued for a purpose very different from that of trying the justice of this claim. The Chancellor heretofore delayed his decision, in order that the persons interested against the claim might have an opportunity of obtaining proofs; but no evidence hath been since obtained on either side, and he is called upon to determine on the papers which had before been filed.

With respect to the first charge in the account, viz: for the annual profits of the claimant's part of the estate, the Chancellor does not perceive the proof by which the precise amount is ascertained. But supposing it ascertained: it is then to be considered, whether or not the annual profits of the six years, between the death of Alexander Frazier and the sale of the land, during which it was enjoyed by the claimant, may be charged against him.

The Act which gives to this Court authority to sell, &c., leaves the debts to be satisfied entirely to the discretion of the Chancellor. He has, indeed, established, that all just debts, except those which were a lien on the lands during the life of the deceased, shall be on an equal footing. But this does not prevent him from rejecting a claim, if any circumstance has taken place since the death of the deceased, which renders it unconscientious or unfair to prefer the claim. It is certain, that if John A. Frazier did not come in as a creditor, the other creditors would not be entitled to an account from him of the profits since his brother's death; but when he prefers a claim against his brother's estate, nothing appears more reasonable, than that he should give credit for the profits he has received from that estate. In short, it is the opinion of the Chancellor, that the claimant is entitled to an account of profits for only about three years; the difference between the time of Alexander's holding John's part, and the time of John's holding Alexander's part. It is worthy of remark, that the Act for the amendment of the law, 1785, ch. 80, s. 7, obliges heirs to apply the real estate agreeably to the rules prescribed for executors and administrators. In a contest, then, between the creditors in general, as in the present case, and the heir of the deceased claiming as a creditor, how is it possible to say otherwise than that his just claim is no more than the balance remaining, after giving credit for the profits of that real estate?

The second charge may be right. The third charge is for the deficiency of money expended in the claimant's education. By-the-bye, if Alexander was chargeable with his education, he ought to have charged the full amount, and to have given credit for the actual expenditure, instead of charging only deficiency and giving credit besides. This charge is founded on the complainant's construction of his father's will.

Now, supposing it to be the intent of the will to charge Alexander with his brother's education and maintenance, the strangest words imaginable