might have been made to pay. If the deceased was only a surety, then the creditor must shew that the principal is insolvent, or he will be excluded altogether. And if the deceased was one of several sureties, then the creditor must not only shew that the principal is unable to pay, but that the other sureties are insolvent, or he will not be allowed to claim more than the equitable proportion for which the deceased was liable. If these facts and circumstances do not necessarily or sufficiently appear from the vouchers, filed as the foundation of the claim, then the burthen of explanation and proof is thrown upon the creditors, and that, too by the *ex officio* act of the Court, without any suggestions or objection to that effect being made by any other creditor or party in the case.

When I came here I found that these principles had been considered as long settled; but I have never been able to persuade myself to approve of them; and now, after some years of observation, I am satisfied that they occasion much embarrassment and delay in the administration of the real assets of deceased debtors; and oftener than otherwise result in absolute wrong and injustice to creditors against whom not the slightest misconduct can, in any manner, be imputed. I shall, therefore, as their correctness and true application have been called in question by these excepting creditors, take this occasion to examine the reasons and grounds upon which they have been rested.

It would seem that these principles, in relation to the administration of the real assets of deceased debtors, had been first introduced in the time of Chancellor HANSON. Speaking in reference

517 * to this subject, in an order passed on the 20th of March, 1800, he says: "there is no proof relative to the circumstances of George Garnet, or the other two securities, William Clayton and Nathan Wright. When claims are exhibited against an infant's estate, and it appears that the debt was due from the deceased and another, or others jointly, it has been the Chancellor's uniform practice to allow only the just proportion to come out of the infant's estate. The practice is founded on this consideration, that, on an application by creditors, for the sale of an infant's estate, it is a matter of sound discretion, whether or not the Chancellor will decree a sale. He is governed by circumstances. In case of a debt due from the ancestor or devisor jointly with another who is solvent, the Chancellor might say I will not decree a sale, or I will not suffer you to receive your debt from the infant's estate, because you have it in your power, or had it in your power, since the ancestor's or devisor's death, to recover your whole claim from the other debtor. But the Chancellor conceived that to avoid circuity of action, and do justice to all, it was proper to charge the infant only his just proportion; or to admit the claim against the estate for only a just proportion. Were