

& J. Miller, assignees of James Taylor, designated by the auditor as No. 44, which appears to have been a debt contracted since the death of Beale M. Worthington, must therefore be rejected.

When I came here, I found many instances of creditor's bills against the heirs of the deceased debtors alone, without making his executor or administrator a party; indeed, it seemed to have been considered by many as the correct course of the Court. *Harwood v. Rawlings*, 4 H. & J. 126; *Duwall v. Green*, 4 H. & J. 270; *Bond v. Bond*, ante, 353; *Flemming v. Castle*, ante, 355; *Dorsey v. Cooke*, ante, 526; *Emory v. Seth*, ante, 541. It was evidently attended with inconvenience, as is exemplified in this case. But by a decision of the Court of the last resort, reported and published since this bill was filed, and only a short time before this decree for a sale was passed; it has been finally and correctly settled, as a general rule, that the personal representative, as well as the heirs and devisees; must always be made a party. *Tyler v. Bowie*, 4 H. & J. 333. Here the administrator has not been made a party, and on that account; this decree might have been withheld or reversed, had the objection been made in time.

It appears, from the report of the auditor that there are some personal assets to be distributed. It is certain, that those assets must be first administered in due course of law and then what remains due, after they have been exhausted, must be paid from the real assets, so far as they will go, to those who have not been satisfied in due proportion, or whose claims have been unjustly rejected by the administrator.

Whereupon it is ordered, that the said exceptions to the auditor's report, and the objections stated by the auditor to any claim.

544 * so far as the same may be in any manner at variance with the principles herein laid down for the government of this Court be, and the same are hereby overruled. And it is further ordered, that this case be, and the same is hereby referred to the auditor with directions to state a final account accordingly.

After which, the auditor filed his report made up as of the 26th of June, 1830, in which he says, that in obedience to this order he had examined the proceedings; that an extract from the second account passed by the administrator had been lately filed, from which it appeared, that dividends of the personal estate had been allowed on claims Nos. 1, 5, 7, 8, 13, 14, 16, 31, 32, 33, 35, 37, and 43. That he had, therefore, re-stated those claims, and also stated an additional claim, No. 45, lately exhibited. That he had also stated an account between the estate of the deceased and the trustee, in which the proceeds of the sale were applied to the payment of the trustee's allowance for commission and expenses, costs of suit, and dividends on the claims stated, excluding Nos. 39, 40,