for that purpose; which was decreed accordingly; thus distinctly giving the Court to understand, in that suit, that the mother and natural guardian of these infants had had no hesitation in applying the personal assets, in her hands as administratrix, to their maintenance and education. And it further appears, that this plaintiff Tessier, had pressed for the payment of his debt, by suing and obtaining judgments upon his collateral security, which judgments have, by accident, been left wholly ineffectual. Hence, although it is not directly shewn how the children were maintained; yet on looking to the nature of the estate as described in the inventories and proceedings, and to the probable cost of maintaining and educating them for about eight years, the irresistible presumption is, that the amount of the difference between the assets shewn to have been in the hands of Rachel Wyse, on the 29th of June, 1816, and * the assets shewn to be in the hands of Joseph Allender, on the 23rd of January, 1824, had been consumed **56** chiefly or altogether by these very heirs and next of kin of the deceased, who are now here as defendants resisting the payment of this claim from the real estate in their hands. *Allender* v. *Riston*, 2 *G. & J.* 86.

A creditor cannot be held bound to guarantee the faithful and proper administration of his deceased debtor's estate; and therefore where, without any fault or connivance of his, the executor or administrator wastes the personalty, the entire residue of the estate real and personal must be held as absolutely liable to such creditor, in all respects, as if no such waste had been committed, or as if the estate had been justly applied in a due course of administration. *Hardwick* v. *Mynd*, 1 *Anstr.* 112. But here, under these circumstances, a Court of equity cannot, certainly, tolerate such a defence as this, that there was originally a sufficiency of personal estate to pay all the debts of the deceased, coming, as it does, from defendants who are both heirs and next of kin, and for whose maintenance and education the personal estate had been thus reduced, so as to exclude a creditor from the real estate in their hands, upon the ground of their having been originally a sufficiency of personal estate to pay the debt. Because if there had been, in contemplation of law, a waste of the personal estate, it was a misapplication of it in which they have largely participated; and because, if there had been any negligence in the plaintiff Tessier, it was a sort of indulgence by which they have been greatly benefited. Such a defence comes with an exceedingly ill grace from those of these defendants who are the heirs and next of kin of the deceased; and therefore cannot, under the circumstances in which they stand, be allowed to avail them, or the defendant Riston who claims under them, in any way whatever; *Williams* v. *Williams*, 9 *Mod.* 300; *Daniel* v. *Skipwith*, 2 *Bro. C. C.* 155; but the real estate in their hands must be held liable, as in cases where a third per-