

balance of his claim by a suit upon the administration bond of the late administratrix Rachel Wyse; as I can see no plausible, legal or equitable pretext for requiring him to sue upon that bond before he is allowed to obtain the relief he now seeks against this administrator *de bonis non*.

Upon the whole I am clearly of the opinion, that this bill may well be sustained against these defendants as a creditor's suit, notwithstanding its alleged defect in not expressly charging, that the personal estate of the deceased was insufficient to pay his debts. The claim of the plaintiff Tessier, has been established by proof demonstrative and satisfactory; it has not been shewn that any fraud, wilful default, or breach of trust can be imputed to him; and it has been shewn that the personal estate of the deceased is, at this time, greatly inadequate to the payment of the plaintiff's claim alone. From which it is clear, that the real estate must be sold; and may be at once sent into the market for that purpose, while the Court is engaged in calling in the creditors, and having an account taken of the personalty. I shall therefore decree accordingly.

Decreed, that the defendant Joseph Allender, account with the complainants of and concerning the personal estate of William Wyse, deceased, and the proceeds thereof which may have come to his hands, or be claimed by him as administrator. That for the purpose of making a final settlement and distribution of said estate, the said administrator Allender, is required to make sale of all the goods and chattels now remaining in his hands. And the auditor is directed to state the account from the pleadings and proofs now in the case, and from such other proofs as the parties may lay before him. And the parties are authorized to take testimony in relation to the account before the Commissioners in the City of Baltimore, or before any justice of the peace elsewhere, on giving three days' notice as usual: Provided, that the testimony be taken and filed in the Chancery office, on or before the first day of November next.

60 *Decreed, that the real estate in the proceedings mentioned, whereof the late William Wyse died seized, be sold for the payment of his debts; that John Scott be appointed trustee to make the sale, &c., the terms of which shall be as follows: One-third of the purchase money to be paid in six months from the day of sale, one other third in nine months from the day of sale, and the residue in twelve months from the day of sale, the whole to bear interest from the day of sale, and to be secured by bond with surety to be approved by the trustee, &c. And the trustee, at the time of advertising the property for sale, shall give notice to the creditors of the said late William Wyse, to file the vouchers of their claims in the Chancery office, within four months from the day of sale.