

Where a claim against the personal estate is disputed by the administrator, and the Orphans Court allow a reduced amount, and both parties acquiesce, the claimant cannot as against the proceeds of the real estate, claim more than was allowed against the personal estate.

[The real estate of Mary Shepherd, deceased, who died in September, 1847, was sold under the proceedings in this case, for payment of debts and distribution amongst the parties entitled. The case was brought before the Chancellor upon exceptions to the Auditor's report and accounts. The disputed claims are those numbered 1, 2, 3, 4, 5 and 6.

Claim No. 1, preferred by Joseph Shepherd consists of an open account against the deceased, commencing in April, 1846, and ending in December, 1847, on which was a balance due with interest of \$228 59, and was filed on the 19th of September, 1849. The first item is a charge of \$65, for building an overseer's house; the 2d "for cash lent, \$120 49, and interest thereon, \$10 54;" the 3d, for building and getting out frame of corn house, \$50; the 4th, for a cart body, \$9. Then follows a credit of \$36 04, for 53 bushels of wheat. The statute of limitations was pleaded to the three first items, they having accrued by the 10th of July, 1846, and it was further objected that the whole claim was not proved. The proof in its support is stated in the opinion of the Chancellor, and was ample except as to the 4th item, of which there was no proof. As to the plea of limitations, it was proved by James Owens, Sen., that within a month before her death the deceased said she owed Joseph, the claimant, a good deal of money. It was also insisted that the act of 1849, ch. 224, was retrospective in its operation and applied to this claim, so as to save it from the operation of the statute.

Claim No. 2, was a single bill for \$170 77, dated the 17th of February, 1844, payable to Joseph Shepherd, and purporting to be signed by the deceased, by her mark thereto, and witnessed by Susan Shepherd, who was one of the complainants in the cause. To this *non est factum* was pleaded, and it was also objected that it was not proved. The proof is stated by the Chancellor.