

materials on which a decree or final disposition of the case may be made ; and to report the result of his examinations, subject to all exceptions of the parties, and to the further order of the Chancellor. On a consideration of this case it does not appear, that the auditor has in any respect departed from the proper line of his duty.(j)

According to the long established practice in creditors' suits it has been most usual, and particularly so of late years, to order the case to the auditor, or rather for the trustee or a party interested to take it to him, after the time allowed to other creditors to exhibit their claims has elapsed, and have an account stated and reported. It is true, that the court may be called upon, in the first instance, to decide upon all or any one of the claims, which have been exhibited. This course is now, however, rarely or never taken, unless when there is supposed to exist some very unusual difficulty. When the case goes to the auditor, without any previous instructions from the court, he admits into his account every claim that has been filed and properly authenticated, with all others which there is any plausible reason to believe may be, in any way, sustained by proof and allowed.(k)

In making distribution of the proceeds of a deceased debtor's real estate among his creditors, this court is directed by an act of assembly,(l) (which in this respect is not at all affected by the testamentary system,)(m) to pay away the proceeds of the realty in the same *order*, that is to be observed by an executor or administrator in making payments out of the personalty.

It has always been the practice in this court to require all claims to be proved before they are allowed either for the whole or admitted to a dividend, in the same manner as they would be required to be authenticated in order to be passed by an Orphans Court ; and therefore no claim, coming in under a creditors' bill, will be passed or allowed, which could not, according to law, be passed and allowed against the personal estate by an Orphans Court. This was the practice long before the passage of the general testamentary act ;(n) and has continued to be so ever since.

It has also been always a settled rule of this court, and is one which has been affirmed by the Court of Appeals, that a judgment against an executor or administrator is of no avail against the

(j) *Le Sage v. Coussmaker*, 1 Esp. Rep. 187 ; *Field v. Holland*, 6 Cran. 21.
(k) *Field v. Holland*, 6 Cran. 26.—(l) 1795, ch. 80, s. 7.—(m) 1798, ch. 101.—(n) 1798, ch. 101.