

claims No. 3, 4, and 5, ought not to be allowed to partake of the proceeds of the realty.

Whereupon it is *ordered*, that the said claims, designated by the auditor as No. 3, 4, and 5, be and the same are hereby rejected. And the auditor is directed to re-state the account accordingly.

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George Barber, whose claim had been stated as No. 3, and Charles Waters, whose claim had been stated as No. 4 and 5, filed their several petitions, on the 7th of July 1828, without oath, in which they alike state, that it was in their power to show, by evidence not now in the proceedings, that the personal estate of the deceased had been exhausted in the payment of other just debts; that the executor was insolvent; and that his sureties might be relieved in equity. Whereupon they prayed, that they might be allowed to adduce further proof, and that the order of the 22d of March might be rescinded, &c.

8th July, 1828.—BLAND, *Chancellor*.—These petitions do not allege, that there is any error apparent upon the face of the decision of the court; nor do they set forth and aver, that the petitioners have discovered any new testimony, not known to them at the time the opinion of the court was delivered; consequently, independently of the want of any affidavit to their petitions, they have laid no foundation for a bill of review, even if they had asked leave to file such a bill; or this were a case in which such a form of proceeding, or something equivalent to it, would be proper. Nor is it stated in these petitions, that there has been any mistake, oversight, or misapprehension in the judgment pronounced; therefore there is no ground for a re-hearing.

But these claimants, after having had a formal hearing of their case, upon all such facts and circumstances as they then deemed pertinent or necessary; and, after having submitted it for a decision; and, after their claims had been rejected, upon the ground of that very objection of which they had full and timely notice, now ask to have the order so passed, rescinded for the purpose of allowing them to introduce other proofs, not now in the proceedings, to remove those objections, and in fact to give to their case an entirely different complexion.

If such a course could be tolerated, under any circumstances, there would be no stability in any decision whatever; for, there is no case in which the parties might not have some pretext for introducing additional proof, of one kind or other, to vary the case in