

in by petition, and have his claim allowed and paid out of the whole or the surplus of the proceeds of the realty of the deceased

Cumming on the joint and several bond of the deceased and one John Cumming, and at the request of the trustee the auditor has stated, as part of the claim, the costs of the deceased as defendant as well as the plaintiff's costs, the whole amount as stated having been paid by the said trustee; and the said whole amount so stated is admitted in writing to be a just claim against the deceased's estate by his eldest son, who admits also that the other obligor John Cumming is insolvent. The said claim is moreover accompanied by a certificate of John Purviance esq'r, as counsel for the plaintiff, that no part thereof has been received, except what is credited. No authentic certificate, however, is produced of the said John Cumming's discharge under the insolvent law; supposing him to be the principal in the bond on which the judgment was rendered. No proof that the said John Cumming was security only. And no affidavit, that the said judgment has been fully discharged.

13th March, 1813.—KILTY, *Chancellor*.—Considering the report and statements by the auditor and the evidence adduced, it is ordered, that all the claims, as stated, be allowed; except the last, being the claim of T. Watkins, which is rejected. The auditor, in stating the account with the trustee, will allot a share to Roderick Warfield, which will be subject to the order of the Chancellor on a further consideration of his petition, and the arguments in writing urged against it.

After which the case was again submitted, at the instance of the widow to obtain a portion of the proceeds of sale in lieu of dower.

14th September, 1813.—KILTY, *Chancellor*.—The widow Ann Spurrier is allowed, (her age being proved) one eighth part of the net proceeds of the land sold to G. Calvert and also of the small tract sold to William C. Spurrier. The claim No. 25 having been paid, according to the former order before that of May 26th 1813, is confirmed. The claim No. 24 is rejected. A distribution of the balance to be made as follows:—The same to be divided into eight parts, one of which is to be reserved for the decision of the claim of Roderick Warfield. The amount of the other seven parts to be equally divided between John and Ann Cumming, William C. Spurrier, John Spurrier, Eliza Spurrier, Richard Spurrier, and Horace Spurrier, Lewis being stated to have died since the sale, and since the death of Henrietta Warfield. The payment of the shares of John Spurrier, Eliza Spurrier, Richard Spurrier, and Horace Spurrier, who are minors, to be made to their mother Ann Spurrier the petitioner, on the approval by the Chancellor of a bond to be filed by her with two sufficient sureties with condition similar to that in guardians' bonds, but reciting the sale, &c. under the decree of this court; and not before. Interest to be paid on the shares in proportion as it has been, or may be received. The petition of Roderick Warfield will be taken up this month on the application of either party.

Proofs having been collected under the order of the 1st of October 1812, to establish the facts set forth in the petition; it appears by the notes of Mr. A. C. Magruder, submitted in opposition to the prayer of this petition, that he insisted, that the husband could at most be considered only as a tenant by the courtesy; especially for that part which had been sold after the death of the wife; that, even if it were to be considered as her money, yet it was a mere equitable title which the husband could not reduce into possession without making a proper settlement. (1 Ves. 538, 3 P. Will. 12.) But, that, in this case, the proceeds must be regarded as land, and pass as the real estate would have passed had the sales not been made; and it had been so held, after much consideration, by the county court of Prince George's in