

or waives them, or there has been a judgment against him; still the heir or devisee may make such objections in defence of the real assets. And where the executor and some of the heirs waive them; yet, any other of the heirs or devisees may alone make them in defence of the whole of the real assets, as was done in the case of *Wm. Frazier's* estate in this court.(j) It seems to

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(j) EDMONDSON v. FRAZIER.—This bill was brought by creditors to subject the real estate of the deceased debtor to the payment of his debts. The estate was sold accordingly under a decree in the usual form. The auditor, in his report of the 29th January, 1822, says, "the act of limitations, which, as a bar to the creditors' claims, is relied upon by the distributees only, the auditor is not satisfied they are entitled, under the circumstances, to the benefit of it." This report was excepted to by the distributees on this and other accounts.

10th April, 1822.—JOHNSON, Chancellor.—Exceptions to the auditor's report are filed. The complainants except to that part of the auditor's report unfavorable to the claim of Nicholas Hammond, which claim is founded on a bond executed by one John Mace, and William Frazier, the above deceased, as security. The auditor, in conformity with the usual course of the court, would not allow the claim without evidence to establish the allegation in the bill, that Mace, the principal debtor, was insolvent. A court of equity when it interposes, and adjusts the relative obligations of contracts and agreements in which more than two parties are concerned, calls them all before the court; that a complete and final adjustment may take place, and each be compelled to pay his just portion; and thereby the creditor draws from each, being solvent, what equitably ought finally to be drawn from him. It will not compel the one, both of the debtors being solvent, to pay the whole, and turn him over to his co-security to restore the one half. When, therefore, estates are sold to pay debts, and in which the interests of minors are generally deeply involved, it becomes the duty of the court, to see, that no claim be allowed, in which the deceased, with others, stands indebted, without satisfactory proof being produced, that the other persons joined in the obligation were insolvent. But as that proof is now produced in support of the claim No. 4, the same is hereby allowed, and the trustee is directed to pay the same, with a due portion of the interest received, or that shall be received.

Exceptions are filed on the behalf of Wm. R. Stewart and wife, of Samuel Wright and Mary Elizabeth Wright, to the claim distinguished by No. 3. This claim, by the answer of those who are only interested in its rejection, under the decree, is strongly contested, and the act of limitations relied on as a bar to the recovery. The answer of one defendant, in chancery, can never implicate the interest of a co-defendant; but more especially, when the person, so answering, is not interested in the matter in controversy. The answer, therefore, of *Wm. Steward's* (Frazier's) widow, and executrix, who had exhausted the personal funds, never can be received to charge the real. They can only be affected by the answer of those interested in them, or by the exhibition of such proofs as will bind them. The claim No. 3, rests on a bond dated 7th February, 1790; and on an open account, about the same time. The bill in this cause was filed on 23d October, 1815, more than twenty-five years after the bond; which was made payable forthwith. A sufficient length of time has elapsed to presume payment. Nor is there any evidence in the cause to remove the presumption. The exception taken to the claim No. 3, is therefore supported, and the claim is hereby rejected. The auditor is directed to re-state the account, rejecting the said claim.