to a creditor upon his costs; although the trustee of the court always has a due proportion of interest awarded to him on the

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on either side, and he is called upon to determine on the papers which had before been filed.

With respect to the first charge in the account, viz: for the annual profits of the claimant's part of the estate, the Chancellor does not perceive the proof by which the precise amount is ascertained. But supposing it ascertained; it is then to be considered, whether or not the annual profits of the six years, between the death of Alexander Frazier and the sale of the land, during which it was enjoyed by the claimant, may be charged against him.

The act which gives to this court authority to sell, &c., leaves the debts to be satisfied entirely to the discretion of the Chancellor. He has, indeed, established, that all just debts, except those which were a lien on the lands during the life of the deceased, shall be on an equal footing. But this does not prevent him from rejecting a claim, if any circumstance has taken place since the death of the deceased, which renders it unconscientious or unfair to prefer the claim. It is certain, that if John A. Frazier did not come in as a creditor, the other creditors would not be entitled to an account from him of the profits since his brother's death; but when he prefers a claim against his brother's estate, nothing appears more reasonable, than that he should give credit for the profits he has received from that estate. In short, it is the opinion of the Chancellor, that the claimant is entitled to an account of profits for only about three years; the difference between the time of Alexander's holding John's part, and the time of John's holding Alexander's part. It is worthy of remark, that the act for the amendment of the law, 1785, ch. 80, s. 7, obliges heirs to apply the real estate agreeably to the rules prescribed for executors and administrators. In a contest, then, between the creditors in general, as in the present case, and the heir of the deceased claiming as a creditor, how is it possible to say otherwise than that his just claim is no more than the balance remaining, after giving credit for the profits of that real estate?

The second charge may be right. The third charge is for the deficiency of money expended in the claimant's education. By the bye, if Alexander was chargeable with his education, he ought to have charged the full amount, and to have given credit for the actual expenditure, instead of charging only deficiency and giving credit besides. This charge is founded on the complainant's construction of his father's will.

Now, supposing it be the intent of the will to charge Alexander with his brother's education and maintenance, the strangest words imaginable are used. It is not, 'I give Alexander one-half of my estate on condition, that he lays out the sum of —— in the complete education and maintenance of his brother, at some approved school,' or, 'I will, that the part of my estate devised to Alexander be charged with the expense of providing a good education to his brother, and likewise completely maintaining him at some approved school.' No! it is, 'my will and desire is, that my son Alexander do, *out of his part of the estate*, expend so much money as will be sufficient to give my son John Alexander a good education.' It is apparent, from the whole will, setting aside this disputed part, that the testator contemplated perfect equality between his two sons; except, that he gave Alexander, the eldest, choice of two equal parts, and makes him executor; which is just what was reasonable, &c. Now, by changing the disposition of the words, and putting '*out of his part of the estate*,' at the end of the clause, it stands perfectly consistent with that intended equality; and it is well observed by the counsel, that transpositions are frequently made for the purpose of supporting a rational construction of the whole.