

plaintiff *Welch's* claim No. 3; and also, because it was not mentioned or demanded in the bill in any form whatever.

16th March, 1829.—BLAND, *Chancellor*.—The exceptions to the auditor's report standing ready for hearing, and the solicitors of the parties having been heard, the proceedings were read and considered.

I take it to be a well settled rule of this court, that on a creditor's bill, the decree for a sale, in the usual general terms, virtually and necessarily establishes the claims of all the originally suing creditors, unless some of them should, by the decree itself, be specially excepted; since it is very clear, that no sale can be ordered, but to pay some one or more debts which have been established to the satisfaction of the Chancellor. (a) But such a decree only establishes the claim of the plaintiff as a debt due from the estate of the deceased debtor, without prejudice to third persons, and consequently, if any others, who may have been allowed to come in as parties to the suit, can shew fraud or any other circumstance by which it shall appear that the debt, as so far established, ought not to be permitted to stand in the way of their interests, it may be then shewn and taken advantage of; because the introduction and reliance upon any such new and collateral matter is not in any way incompatible with an admission of the stability of any of those points which had been previously adjudicated upon and determined by the decree.

But no such new matter having been advanced and relied upon, as a cause why these claims, Nos. 1, 2 and 5, should be rejected altogether, or postponed in favour of, and to make way for the satisfaction of the claims of these excepting creditors, they must stand as having been established against the estate of the deceased. And the claim No. 1, as inclusive of No. 2, having been secured by the deed of trust, in the manner set forth by the bill, must be allowed a preference of satisfaction out of the proceeds of the trust fund; since it has not been alleged or shewn that there was any infirmity in the deed of trust as regarded other creditors, not provided for by it; or that this was not, in fact, one of the debts intended to be secured by it. The proceeds of the trust fund, must therefore be first applied in satisfaction of the claim No. 1, as including No. 2; and the surplus, if any, together with the proceeds of the other portion of the deceased's estate to

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(a) *Strike's case*, 1 Bland, 70; *Williamson v. Wilson*, 1 Bland, 441.