

It is sufficiently obvious, upon general principles, in a creditor's suit to administer the assets of a deceased person, that no debt can be allowed and paid out of such assets, which was not contracted by, or due from him, during his life-time; and it has been distinctly so settled by this court, and by the Court of Appeals. (o) The claim of *A. & J. Miller*, assignees of *James Taylor*, designated by the auditor as No. 44, which appears to have been a debt contracted since the death of *Beale M. Worthington*, must therefore be rejected.

When I came here, I found many instances of creditor's bills against the heirs of the deceased debtor alone, without making his executor or administrator a party; indeed, it seemed to have been considered by many as the correct course of the court. (p) It was evidently attended with inconvenience, as is exemplified in this case. But by a decision of the court of the last resort, reported and published since this bill was filed, and only a short time before this decree for a sale was passed; it has been finally and correctly settled, as a general rule, that the personal representative, as well as the heirs and devisees, must always be made a party. (q) Here the administrator has not been made a party, and on that account, this decree might have been withheld or reversed, had the objection been made in time.

It appears, from the report of the auditor, that there are some personal assets to be distributed. It is certain, that those assets must be first administered in due course of law, and then what remains due, after they have been exhausted, must be paid from the real assets, so far as they will go, to those who have not been satisfied in due proportion, or whose claims have been unjustly rejected by the administrator.

Whereupon it is *Ordered*, that the said exceptions to the auditor's report, and the objections stated by the auditor to any claim,

(o) *Carnan v. Turner*, 6 H. & J. 66.

*HULSE v. CRADOCK*.—This was a creditor's bill, filed on the 21st of January, 1797, to have John Cradock's real estate sold, to pay his debts; sale decreed, &c. The sales as made and reported, were absolutely ratified and confirmed. After which, upon a receipt of a solicitor for his fee, for drawing the answers of the defendants, being presented and filed as a claim against the deceased's estate.

28th March, 1799.—*HANSON, Chancellor*.—This is no debt due from the deceased. It cannot even come in by way of costs, no costs being allowed for drawing answers; it must therefore be rejected.

(p) *Harwood v. Rawlings*, 4 H. & J. 126; *Duvall v. Green*, 4 H. & J. 270; *Bond v. Bond*, ante 353; *Flemming v. Castle*, ante 355; *Dorsey v. Cooke*, ante 526; *Emory v. Seth*, ante 541.—(q) *Tyler v. Bowie*, 4 H. & J. 333.