

any additional peril. For if the parties have not been all brought before the court; or if they cannot be brought before it; because of their not having any such privity of interest as will warrant the making of them parties to the same suit; or if the two funds cannot be embraced within the scope of the same suit; and much more so, if they be not both of them within the jurisdiction of the court, it would be utterly impracticable to make any such arrangement in favour of any one set of creditors against another, the security of whose claim may be thus greatly endangered, and the satisfaction of which must necessarily be delayed and consequently lessened. (q)

It is believed, that although the real estate of a deceased debtor may be subjected to the payment of his debts in most of the states

He further reports, that he designs hereafter to file with this report accounts, drawn off in form, containing what is already included in this report; for the purpose of more convenient reference, so as to enable all the parties interested to see, without reading the report, the result at which it arrives.

Soon after which the auditor reported, that in conformity with his suggestion in his report of the 8th instant, he has prepared and now submits herewith accounts A. B. C. and D. Accounts A. and B. present the views of the auditor as stated in his said report. Account C. shews the liabilities of the several parties to each other, if the Bank is allowed to claim by substitution, or as a general creditor for the amount lost on Edward Gibson's devise. Account D. has been prepared under the instruction of the solicitor of the Bank; and awards to that institution payment of its debt in full; leaving a small balance unappropriated

On the 23d of April, 1841, the plaintiff, the heirs of Bennett, and of Blake, and Mrs. Tilton and James Tilton, excepted to this report of the auditor; and on the day following the Bank filed their exceptions to it. Soon after which the case was submitted without argument.

29th April, 1841.—BLAND, Chancellor.—Ordered, that the foregoing accounts, designated as accounts A. and B. as made and reported by the auditor, be and the same are hereby ratified and confirmed; and the trustee is directed to apply the proceeds accordingly, with a due proportion of interest, that has been or may be received. All other parts of the said reports of the auditor filed on the 9th of March last, together with all exceptions to the same, which are in any way at variance with this order, are hereby overruled and rejected.

It is understood that the parties acquiesced in the propriety of this order, and finally adjusted the case among themselves accordingly.

This case has been inserted here as a leading one in relation to the statute of limitations when relied on in a creditor's suit; and the nature and operation of its principles may be deemed to have been sufficiently illustrated by what is here said, together with what has been stated of it in the other reports of it referred to as above.

(q) *Wright v. Simpson*, 6 Ves. 734; *Ex parte Kendall*, 17 Ves. 520; *Everston v. Booth*, 19 John. Rep. 486; *The York & Jersey Steam Boat Ferry Company v. The Associates of the Jersey Company*, 1 Hopkins, 460.