

but such creditors as are *citizens of this state* (r) should be allowed to come in and have the real estate sold for the payment of their debts in the manner prescribed. These legislative provisions it is obvious have relation to peculiar cases, to which the state is a party, and do not in any way affect the rights of a creditor against the heirs or devisees, executors or administrators of his deceased debtor.

From this review of the law in relation to the matter now under consideration, it is therefore perfectly clear, even admitting that the defendants have relied upon the fact, that the plaintiffs had failed to allege and prove, that the personal estate of *William Wyse* deceased, was insufficient to pay his debts, it can be of no avail to them as a defence against the claim of these plaintiffs to obtain satisfaction by a sale of the real estate of the deceased in their hands; since, if it be true, that there is a sufficiency of personal estate to pay the debts of the deceased, it rests with these heirs alone to allege and shew that fact, and how that estate may be now so applied for the saving of their own interests. But as these heirs have failed to do so, the real estate in their hands must certainly be held liable, at least so far as the personal estate may be insufficient, as it now appears to be upon the face of these proceedings.

But the proofs show that although the personal estate might originally have been more than sufficient to pay this debt, it has since, by some means or other, fallen greatly short. Admitting then that there has been a waste of the personal assets; do these heirs and next of kin stand here as persons having no interest in the personalty, or having no concern with this apparent misapplication of it? And has the conduct of the plaintiff *Tessier*, been such, that the loss must fall entirely upon him?

It is clear that an account of an administrator passed by the Orphans Court must be received as *prima facie* evidence of the then truth of the facts stated in it, at least as against the administrator; and therefore it must be assumed, until the contrary is shewn, that the administratrix *Rachel Wyse*, on the 29th of June, 1816, had in her hands a sufficiency of assets to pay this debt. But the strongest proof which could be adduced of that fact, would not preclude her from shewing, in answer to the claim of a creditor, made at a subsequent period, that she had since disbursed the whole amount,