

cases in which all the other creditors of the debtor, against whom, or whose estate the suit is brought, may come in either before or after the decree, or at any time before the assets have been distributed, and claim a proportionable share of them. And supposing the bill had alleged, that the originally suing creditors sued as well for others as for themselves, it is said, that the right of such others to come in could not now have been questioned. In England it seems to be an established rule, in cases of this kind, that the bill should distinctly allege, that the complainant institutes the suit, as well for the benefit of all others who may thereafter come in, as of himself. In this State such a *qui tam* allegation in bills of this nature is very common, and is certainly very proper and useful in apprising the Court, and all concerned, at once, of the object and character of the suit. But this is the first instance here in which such an objection, to a bill of this kind, has ever been made, so far as I have been able to learn. In this case, it sufficiently appears from the whole proceedings, bill, answers, orders and decree, that this is a case in which other creditors may come in; and therefore in this instance, and in this stage of the case, I cannot say, that the bill is erroneous and deficient for the want of such an allegation; consequently the other creditors of Rogers may be permitted to come in and participate, notwithstanding there is no such allegation in this bill. *Martin v. Martin*, 1 Ves. 214.

But it is objected, that those other creditors who, it is alleged, have actually come in to partake, have not presented themselves in legal and proper form, that their claims have not been sufficiently authenticated and proved; and, even if these objections were removed, that their claims are barred by the Statute of Limitations. These objections will be severally considered, and also the reply, *that such objections can only be made by the defendants, and not, as in this instance, by a creditor or co-plaintiff. **85**

In England it is the established practice, after a decree to account has been obtained in a creditors' suit, to give notice by advertisement in the *Gazette*, to all the other creditors, to bring in their claims to be adjusted before the Master; (the *Case of the Creditors of Sir C. Cox*, 3 P. Will. 343;) and the mode of doing so, is by the creditor's producing the voucher thereof with his affidavit of the amount then remaining due. 2 *Harr. Pra. Cham.* 36; 2 *Fow. Ex. Pra.* 252; *Hardeastle v. Chettle*, 4 *Brow. C. C.* 163. In this State the practice is nearly the same. But in some special cases the creditor has been allowed to bring in his claim by petition, in order that its nature and peculiar merits might be more particularly set forth; or that he might be permitted to assume the position of a co-plaintiff before the decree, so as to authorize him to prosecute the suit, and to have a voice and vote in the appoint-