

seen or heard of the advertisements, or of the suit; and, therefore, it would be the height of injustice, that the proceedings of the Court, wisely adopted with a view to general convenience, should have the effect of conclusively applying the fund unequally and wrongfully; or of transferring the property of the true owner to one who had no right to it. And, therefore, the Court will, at any time before it has actually parted with the fund, upon the application of a claimant, let him in, and send the case again to the auditor, to have the distribution recast at his expense; except, indeed, as to small claims, which can be satisfied out of the accruing interest of the purchase money of the real estate which had been sold, without incurring the expense of a re-statement. *Gifford v. Hort*, 1 *Scho. & Lefr.* 409; *Lashley v. Hogg*, 11 *Ves.* 602; *Angell v. Haddon*, 1 *Mad. Rep.* 529; *David v. Frowd*, 7 *Cond. Cha. Rep.* 8.(w)

If, however, a part only of the fund remains in Court, such part will be charged with no more than its due proportion, leaving  
**365** the \* claimant to seek satisfaction for the residue from the next of kin, legatees, heirs or devisees to whom the other shares of the fund had been actually paid. But after the Court has actually parted with the whole fund, upon a bill filed by a creditor, next of kin, heir, or devisee against those alleged representatives, of the deceased, among whom the property had been distributed, the Court will, upon proof of no wilful default on the part of such creditor, next of kin, heir or devisee; nor any want of reasonable diligence, compel the next of kin or distributees to pay or restore to such plaintiff that to which he may appear to be justly entitled. *Herey v. Dinwoody*, 4 *Bro. C. C.* 268; *Good v. Blewitt*, 19 *Ves.* 337; *Gillespie v. Alexander*, 3 *Cond. Cha. Rep.* 330; *Greig v. Sumerville*, 4 *Cond. Cha. Rep.* 457; *David v. Frowd*, 7 *Cond. Cha. Rep.* 8; *Mitf. Plea.* 166; 2 *Fow. Exch. Pra.* 253, 279; *Strike's Case*, 1 *Bland*, 86; *Williamson v. Wilson*, 1 *Bland*, 441; *Dorsey v. Hammond*, 1 *Bland*, 468. But if the whole estate has been distributed

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(w) *FRAZER HONYWOOD*, by his will, gave £20,000, upon trust, to be distributed among such of his relations by consanguinity, who should not each be worth more than £2,000; and who should, within two years after his death, apply to participate in the donation. And, that they might be apprised of it, directed that notice should be given by advertisement in the *London Gazette*, and such other newspapers as his executors should think proper, once a month, for two years after his death. The testator died on the 28th of January, 1764; and the executors having advertised, as directed, applications were made within the two years by four hundred and fifty-six persons who resided in different parts of the world, to wit: England, Scotland, Ireland, Spain, Portugal, Antigua, Jamaica, and South Carolina. After which, the case was heard, and a distribution made accordingly. *Bennett v. Honywood*, *Amb.* 708. There have been several creditors' suits in this Court, within the last ten years, in which, on a notice of only four months, more than one hundred and fifty creditors have come in under the decree. *Simmons v. Tongue*, *post.*