139, *note*, or where a judgment had been obtained against the surety on a bond, such surety, before he had paid any part of the debt, was permitted to file a bill against the representatives of the deceased, and to have the realty sold for the satisfaction of his principal's debt to save himself harmless. *Howard* v. *Harris*, 1 *Vern.* 193; *Antrobus* v. *Davidson*, 3 *Merival.* 570; *Arthur* v. *The Attorney-General*, *ante*, 246.

389 * In the case under consideration, it is clear, that the creditors of the late Philip Hammond could only obtain satisfaction from his real estate in the manner in which his will directs; and that they could only enforce payment in that mode by a bill to which the heirs, devisees, and executors, were parties; because, by the will a sufficiency of assets for the payment of all the debts of the testator have been lawfully passed into their hands. But the devisees and legatees, under the will of Philip Hammond, deceased, take an estate or interest which they have a right to have disencumbered and protected from the charge imposed upon it, either by means of the funds placed in the hands of his executors for that purpose, or that the incumbrance should be adjusted and reduced to its proper proportions, and lowest amount, by a contribution from all the devisees charged with contribution. In this respect, these devisees stand in the condition of junior mortgagees, or simple contract creditors, who have a right to redeem, or to have all superior incumbrances satisfied and removed, so as to give them the full benefit of the surplus. But, from the manner in which they take and hold, they have no means of ascertaining whether there are, in fact, any creditors or not; or if there are any, who they are, and the amount due to each, which has been left unpaid out of the fund set apart by the testator for their satisfaction. Unless they are permitted to have their complaint for all these purposes considered and treated as a creditor's suit, and the creditors of the testator notified to come in, establish their claims, and receive satisfaction, they can, in no way, disengage their respective portions from the incumbrance charged upon it, the cloud that has been thus suspended over them may long remain, or, at some future day, burst upon them to their ruin.

The next difficulty is, as to the proportions in which these devisees are to contribute. It has been contended, that the testator having given to each one of them what he, at least, considered as portions of equal value, must therefore have intended that they should contribute share and share alike. But I understand the testator differently.

As I have before remarked, it is perfectly evident that the testator had adjusted the divisions and distribution of his estate with great deliberation and care; and by the very act of setting apart a separate fund for the payment of his debts, he strongly indicated an intention, that the relative value of the divisions he had