622 * the realty may be directed to be applied to the payment of debts in aid or relief of the personalty out of which the legacies are given; in which case, at the instance of such legatees, such a testamentary appropriation may be carried into effect, but without prejudice to creditors. *Clarke* v. *Ormonde*, 4 *Cond. Cha. Rep.* 50.

Here, the testator William, clearly contemplated the payment of all his debts in the first place, before his estate should, or indeed, could be distributed in the manner he prescribed. It is shewn, that he left a large amount of debts unsatisfied; and it also appears, that his executors have not yet finally settled up his estate; and that his creditors have not been called upon to bring their claims before this Court for adjustment and satisfaction.

This is a bill by a legatee and devisee, to have the estate of the testator William, distributed, in order that she may thus obtain that portion of it, to which she is entitled. This, it is manifest, cannot be effected, until the creditors of the deceased have been called in and satisfied. A legatee, by a bill of this kind, has a right to call for a final settlement of the testator's estate; and, in order to accomplish that object, as the only means of getting his legacy clear of all incumbrance, he has a right to have his bill filed for that purpose, treated as a creditor's bill, as regards the creditors of the testator, and to have them notified to bring in their claims. I have had occasion lately, and sufficiently to explain the reasons and grounds of my opinion upon this subject. *Hammond* v. *Hammond*, *ante*, 316. In this case, there can be no final distribution made of this estate, until after the expiration of the time allowed to the creditors to bring in their claims. And consequently, a notification to the creditors, is the first thing that must now be directed to be done.

This case has been treated in the argument, as one in which the testator William, had put his children, by his wife, Kitty, to an election to take under, or in opposition to his will. And I think there can be no doubt, that it is one of that description. But it is a case of election, accompanied by very peculiar circumstances. The power given by the testator Baruck, to his son-in-law, is confined exclusively to the real estate; and as to that estate, extends only to a mere choice among certain persons; one, or some, or all of whom, were to take at all events. If the testator William, and his wife Kitty, had had only one child at the time of Kitty's death,

623 * then, as there could have been no choice, the power would have been thus virtually extinguished. Such only child could not have been put to an election under such a testamentary provision, and the right to put to an election, must have rested upon general principles, independently of that power. There being in fact, however, a plurality of such children, no exercise of the power which merely gave the whole of the lands derived from