

court is called on to make a distribution of the fund. The claim of the plaintiffs has, as we have seen, to a certain extent, been settled and determined by the decree of May 1822; and therefore, their claim is not now to be reconsidered and reinvestigated.

It has been objected, that the bill does not, as it ought, allege that the complainants sue as well for the benefit of other creditors, as for themselves. It is often a matter of some perplexity to determine who ought to be made parties, the rule being laid down in general terms, that all who are interested in the decree should be made parties. This decree virtually recognises this as one of those 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. (a)

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,

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(a) *Martin v. Martin*, 1 Ves. 214.