

that such objections can only be made by the defendants, and not, as in this instance, by a creditor or co-plaintiff.

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*; (a) and the mode of doing so, is by the creditor's producing the voucher thereof with his affidavit of the amount then remaining due. (b) 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 appointment of a trustee. (c) And there are instances in which the creditors have been called in before a decree, in order to ascertain the amount necessary to be raised by a sale of the real estate. (d) But with these exceptions

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(a) *The Case of the Creditors of Sir C. Cox*, 3 P. Will. 343.—(b) 2 Harr. Pra. Chan. 36; 2 Fow. Ex. Pra. 252; *Hardcastle v. Chettle*, 4 Brow. c. c. 163.

(c) *McMECHEN v. CHASE*.—This was a suit instituted by a creditor of a deceased debtor against his heirs to have his real estate sold for the payment of his debts.—In which suit Elizabeth Edwards, by petition, setting forth, that her testator was a creditor of the deceased, prayed to be admitted as a co-plaintiff, so as to come in, participate, &c.

1st October, 1816.—KILTY, *Chancellor*.—The prayer of the above petition is granted.

After which there was a decree for a sale, under which a sale was made and confirmed; and sundry other proceedings were had, when the case was brought before the court.

6th November, 1820.—KILTY, *Chancellor*.—I consider the practice, as to the act of limitations, to be similar to that of the courts of law. If the defendant, in his answer, contests the claim in any other manner, without pleading, or relying on the act, he cannot afterwards resort to that defence. Claims filed, on the sale of a real estate, by creditors, not originally parties, are subject to be contested by the heirs; not usually by answer, but by some written notice of their defence. A defence was made in writing to this claim, on the part of the heirs, on the 10th of February, 1818; after which witnesses were produced, on both sides, and proceedings were had before the auditor. The plea, now relied on, was filed on the 10th of December, 1819, and cannot be admitted.

(d) *CORRIE v. CLARKE*.—This was a creditor's bill filed on 22d April, 1800. It begins thus: "The bill of complaint of James Corrie, administrator of John Corrie, and in his own right, in behalf of himself, his intestate's estate, and others the creditors of Parrott Clarke, late of Caroline county, deceased, sheweth that the said," &c. &c.

19th May, 1802.—HANSON, *Chancellor*.—Ordered, that the creditors of the said Parrott Clarke, by the publication of this order, at least three times before the 16th day of June next, in the *Easton newspaper*, be notified to bring into this court their