not claim as one having a common interest with the other creditors of *Nicholas Welch*, deceased; or as one who was only entitled to obtain immediate satisfaction here out of his real estate in the hands of his infant heirs, upon the ground that his personal estate was insufficient or had been exhausted. There is, therefore, nothing in the pleadings, as they stand, which shews this to be a creditor's bill under which all the other creditors of the deceased should be notified to bring in their claims.

It is true, that this might have been converted into a creditor's suit; and that this surplus distributed among these heirs, exclusive of the widow's share, might, before it was paid over to them, have been thus intercepted for the benefit of the general creditors of the deceased. But that could only have been done at the instance and on the petition of a creditor having a common interest with others, and on the ground of the insufficiency of the personal estate of the deceased; (*c*) or on the application of one, who, from the peril in which he stood, had a right to be substituted for, and to be considered as such a creditor. As where an executor or administrator, who had paid away all the personal assets, was actually sued, and against whom judgment was likely soon to be recovered by a creditor of the deceased, petitioned to have the surplus applied to the satisfaction of such claims to which he was in danger of being made liable; (*d*) or where a judgment had been obtained against the surety in a bond, such surety, before he had paid any part of the debt was allowed to sustain a creditor's suit here, on the ground of the insufficiency of the personalty, and to have the real estate of the deceased debtor sold for the satisfaction of his creditors, so as, in whole or in part, to save such surety harmless. (*e*)

(*c*) Latimer *v.* Hanson, 1 Bland, 51; Fenwick *v.* Laughlin, 1 Bland, 474.—(*d*) O'Brien *v.* Bennet, 1 Bland, 86, note.

(*e*) ARTHUR *v.* THE ATTORNEY-GENERAL.—This bill, filed on the 9th of December, 1800, by James Arthur and Daniel Perkins, states, that the late William Biggs died, leaving no known heirs; that the plaintiff Perkins, had administered on his personal estate, which was insufficient to pay his debts; that he left real estate for which an escheat warrant had been taken out, which the plaintiffs had caveated, (1785, ch. 78;) that the plaintiffs were bound as sureties of the deceased, and the debt not having been paid, they were still liable as such; and that a suit had been brought and a judgment at law obtained against the plaintiff Perkins. Whereupon, it was prayed, that the real estate might be sold to pay his debts; that his heirs, if any there were, might be notified, and that a subpœna might be issued to the attorney-general; (1785, ch. 78; 1794, ch. 60, s. 6.)

Elizabeth Hopkins and Joseph George, the obligees, to whom the plaintiffs were bound as sureties for Biggs, were not made parties; nor was Charles Hackett, who