

well for the benefit of creditors as of themselves ; and yet the case has been hitherto so conducted as if it were by positive allegation and in its nature a creditor's suit.

The defendants have urged, that there is nothing in the pleadings, as amended and aided by the agreement filed on the 7th of November last, which can warrant these plaintiffs in assuming the position of creditors ; or which can give them a right to have their complaint considered as a creditor's suit, under which they could, as has been done, give notice, in the usual manner, to the creditors of *Philip Hammond*, deceased, to come in and participate in the distribution of this fund. To answer this objection, and for the purpose of obtaining a clear view of the whole subject, I shall take this occasion to consider the nature of a creditor's suit more at large, than the questions now presented, may seem to require.

The estate of a deceased person must be first applied to the payment of his debts, leaving the residue only to go, as directed by his will, or as the law has provided in cases of intestacy. But as the person who takes out administration of his estate, in most cases, cannot know who are his creditors, and may not know who are his next of kin ; and the administration of his estate may be exposed to great delay and embarrassment ; the Court of Chancery has long exercised a most wholesome jurisdiction, in such cases, for the prevention of delay and embarrassment ; and for the assistance and protection of the representatives of the deceased, by assuming the administration of his estate. (e) With these views ; and, for the purpose of securing the fund, and of doing equal justice to all, this court will take upon itself, the general administration of the assets of a deceased debtor, either at the instance of one or more of his creditors, (f) or legatees, (g) or next of kin ; (h) or on a bill filed by an executor ; (i) or a trustee of the testator's estate, for direction or indemnity in the payment of debts. (j) And it will, in like manner, in some cases, assume the distribution of the estate

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(e) *David v. Frowd*, 7 Cond. Chan. Rep. 8.—(f) *Douglas v. Clay*, 1 Dick. 393 ; *Paxton v. Douglas*, 8 Ves. 520 ; *Terrewest v. Featherby*, 2 Meriv. 480 ; 1798, ch. 101, sub ch. 8, s. 7 ; 1802, ch. 101.—(g) *Brooks v. Reynolds*, 1 Bro. C. C. 183 ; *Drewry v. Thacker*, 3 Swan. 544 ; *Jackson v. Leaf*, 1 Jac. and Wal. 229 ; *Clarke v. Ormonde*, 4 Cond. Chan. Rep. 47.—(h) *Waite v. Temple*, 1 Cond. Cha. Rep. 162 ; *Greig v. Somerville*, 4 Cond. Cha. Rep. 453 ; *Conway v. Green*, 1 H. & J. 151 ; 1718, ch. 5, s. 3 ; 1798, ch. 101, sub ch. 14, s. 6.—(i) *Perry v. Phelips*, 10 Ves. 39.—(j) *Leech v. Leech*, 1 Cha. Ca. 249 ; *Brooks v. Reynolds*, 1 Bro. C. C. 183.