devisees must be made parties to enable the creditors to obtain satisfaction out of such real assets. (*t*) Owing, however, to our law of partible inheritances, much inconvenience arises, in some cases, from the rule, that all the heirs and devisees must be made parties; which the legislature has endeavoured to remove, by requiring the heir, at common law only, to be summoned; and allowing an order of publication against the rest. (*u*) But although it is, in general, necessary to have the executor or administrator before the court; either as a plaintiff, asking direction and indemnity, or as a suing creditor; (*w*) or as a defendant, to have an account of the personal estate, that it may be first applied as far as it will go; yet if the debtor left no personal estate whatever, and that fact plainly appears in the case; or the personal estate left by him, was of so little value, that no one had taken out letters of administration; (*x*) which fact of there having been no letters of administration may be sufficiently shewn by a certificate of the register of wills of the county in which the debtor died; (*y*) or if the executor of the deceased debtor be dead and insolvent, a creditor's suit may be sustained against the heirs and devisees of the deceased debtor alone, without making his personal representatives defendants. (*z*)

If the deceased debtor at the time of his death, was a partner with others, then, upon the allegation of that fact; and because of his assets having been so, during his life-time, mixed up with the property of others, his surviving partners, upon whom the whole had devolved, must be also made parties, in order, that the plaintiffs may have an account of the personal estate entire; and so obtain, from the surviving partners, that which properly forms a part of the assets of the deceased. (*a*) Where the bill charges, that by collusion between the executor or administrator of the deceased, and some third person the assets have been misapplied or wasted, such third person will be held liable; and, therefore, should be

---

(*t*) Knight *v.* Knight, 3 P. Will. 331; Kenyon *v.* Worthington, 2 Dick. 668; Galton *v.* Hancock, 2 Atk. 435; Ashurst *v.* Eyre, 3 Atk. 341; Madox *v.* Jackson, 3 Atk. 406; Fordham *v.* Rolfe, 5 Cond. Cha. Rep. 257; Tyler *v.* Bowie, 4 H. & J. 333; David *v.* Grahame, 2 H. & G. 97.—(*u*) 1797, ch. 114; 1831, ch. 311, s. 10 and 11; Kilty *v.* Brown. ante 222.—(*w*) Wankford *v.* Wankford, 1 Salk. 304.—(*x*) Walley *v.* Walley, 1 Vern. 487; Cowslad *v.* Cely, Prec. Cha. 83; D, Aranda *v.* Whittingham Mosely, 85; Heath *v.* Percival, 1 P. Will. 684; Ashurst *v.* Eyre, 2 Atk. 51; Madox *v.* Jackson, 3 Atk. 406; Will. Exrs. 227.—(*y*) Deshon *v.* Buchanan, 1 February, 1819.—(*z*) Gregory *v.* Forrester, 1 McCord. 326; Riddle *v.* Mandeville, 5 Cran. 330.—(*a*) Bowsher *v.* Watkins, 4 Cond. Cha. Rep. 424; Holland *v.* Prior, 7 Cond. Cha. Rep. 22.