

made a party, in order to obtain a decree against him; (b) so too, where the executor is insolvent and has not the means to sue, or will not act, a creditor's suit may be brought against him and other persons accountable to the estate. (c) And where, after the death of a debtor, his personal estate had passed into the hands of his executor or administrator, who died without accounting for such assets, the executor or administrator of the deceased executor or administrator becoming thereby, as it were, a representative of the first deceased debtor, in respect of the assets which had thus come to the hands of his testator or intestate; and being so liable to that extent, should be charged and made a party accordingly, together with the surviving executor, or the administrator *de bonis non* of the first deceased; not, however, upon the ground, that an executor of an executor is entitled, here as in England, to administration *de bonis non* of the first deceased; (d) but because of there being, in respect of such assets, a privity and a mediate representation of, and indebtedness to the first deceased. (e)

In a creditor's bill against the representatives of a deceased debtor, it was formerly not unusual to describe particularly the real estate of which the deceased debtor died seized; but as it may, in most cases, be impracticable for a creditor to do so, it has been held to be unnecessary to set forth any description of the deceased's real estate. (f) But it is usual, and in most cases necessary, in such bills, to set out with a *qui tam* allegation, that "your orator, A. B., of — county, as well on behalf of himself, as of other the creditors of C. D., late of — county, deceased, who shall come in and contribute to the expense of this suit, that the said C. D. being, in his life, and at the time of his death, seized in fee simple of a considerable real estate," &c. (g) Whence it would seem, that the other creditors should always be called in to participate as *co-plaintiffs*; but when they do come in, they are thenceforward considered as parties to the suit; (h) and may be regarded as taking the position of either plaintiffs or defendants as their in-

---

(b) *Elmslie v. M'Auley*, 3 Bro. C. C. 624; *Doran v. Simpson*, 4 Ves. 651; *Alsager v. Rowley*, 6 Ves. 749; *Benfield v. Solomons*, 9 Ves. 86.—(c) *Burroughs v. Elton*, 11 Ves. 29.—(d) 1798, ch. 101, sub ch. 5, s. 6.—(e) 1816, ch. 203, s. 3; *Williams v. Williams*, 9 Mod. 299; *Holland v. Prior*, 7 Cond. Cha. Rep. 22.—(f) *Mc-Mechen v. Chase*, 19th July, 1815, per Kilty, Chancellor, on demurrer for that cause.—(g) 2 Harr. Pra. Cha. 322; *Willis, Plea. Eq.* 220.—(h) *Neve v. Weston*, 3 Atk. 557; *Hardcastle v. Chettle*, 4 Bro. 163; *Good v. Blewitt*, 19 Ves. 338.