

although the name of such creditor was, without his consent, inserted in the bill filed on behalf of all the creditors of the testator; (*t*) or to restrain an action brought by a lessor against an executor, as executor, for a breach of covenant to repair; since the fact of a breach, and the damages may be as well ascertained by the auditor as by a jury. (*u*) And the like injunction may be obtained, not only where the bill is filed by creditors; but also where it is filed by an executor to have the directions of the court for the execution of the will, and to be indemnified; (*w*) or for the same purposes, by trustees of the testator's estate; (*x*) or where it is filed by a residuary or other legatee; (*y*) and the injunction may be obtained on the application of an executor, where the bill is filed by creditors; (*z*) or by trustees; (*a*) or on the application of a creditor plaintiff, the bill being filed by creditors against the executor; (*b*) or on the application of a legatee, by whom the bill is filed against the executor. (*c*)

But, in granting an injunction, in cases of this kind, in order to protect the real or personal representatives from pressure at law, the court is always careful not to exclude creditors, proceeding at law, from the benefit of their diligence, by which they have established a right to be satisfied, either out of the assets of the deceased, or *de bonis propriis* of the representative; a right which, in some cases, the conduct of the representative will confer on them, and in others their activity; and will not indulge creditors who have lain by to the extent of depriving the diligent of the fruits of their diligence. (*d*) And, therefore, an injunction may be obtained to shelter assets against execution under a judgment against the heir or executor; (*e*) as where after a decree to account, a creditor proceeds to trial at law, and there obtains a verdict; (*f*) or where

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Clarke v. Ormonde, 4 Cond. Cha. Rep. 47; Lord v. Wormleighton, 4 Cond. Cha. Rep. 67; Fielden v. Fielden, 1 Cond. Cha. Rep. 128; Drewry v. Thacker, 3 Swan. 529; Martin v. Martin, 1 Ves. 211; Farnham v. Burroughs, 1 Dick. 63.—(*t*) Douglas v. Clay, 1 Dick. 393; Perry v. Phelps, 10 Ves. 40.—(*u*) Sutton v. Mashiter, 2 Cond. Cha. Rep. 525.—(*w*) Rush v. Higgs, 4 Ves. 638.—(*x*) Brooks v. Reynolds, 1 Bro. C. C. 183.—(*y*) Jackson v. Leaf, 1 Jack. & Wal. 231.—(*z*) Clarke v. Ormonde, 4 Cond. Cha. Rep. 54.—(*a*) Brooks v. Reynolds, 1 Bro. C. C. 183.—(*b*) Terrewest v. Featherby, 2 Meriv. 482, n.—(*c*) Clarke v. Ormonde, 4 Cond. Cha. Rep. 54; Drewry v. Thacker, 3 Swan. 544.—(*d*) Drewry v. Thacker, 3 Swan. 544; Fielden v. Fielden, 1 Cond. Cha. Rep. 128; Price v. Evans, 6 Cond. Cha. Rep. 234; Kent v. Pickering, 7 Cond. Cha. Rep. 541.—(*e*) Terrewest v. Featherby, 2 Meriv. 480; Clarke v. Ormonde, 4 Cond. Cha. Rep. 54; Price v. Evans, 6 Cond. Cha. Rep. 234.—(*f*) Lord v. Wormleighton, 4 Cond. Cha. Rep. 67.