

it, may order him to make affidavit of the amount, and to bring into court that, if any, which he so admits to be in his hands. Yet it is not an absolute rule of the court to refuse an injunction, unless there is an affidavit stating the assets in the hands of the personal representative. Or, should a case arise, of assets wasted by a personal representative, from the neglect of the solicitor, by whom the suit was conducted, the court would hold him responsible; (*k*) or should there be any improper delay by the original plaintiff, any one, who has been allowed to come in as a creditor or party, may be permitted to take his place, and prosecute the suit. (*l*) For, although a plaintiff, who sues on behalf of himself and all other persons of the same class, as he acts upon his own mere motion, and at his own expense, retains the absolute dominion of the suit, until another has been admitted as a co-plaintiff, or until a decree to account, and may dismiss the bill at his pleasure; yet, after another has been admitted as a co-plaintiff, or a decree has been passed, he cannot, by his conduct, deprive other persons of the same class, who thus become actors, of the benefit of the suit if they think proper to prosecute it. (*m*)

I am, therefore, of opinion, that this is, in effect, and may properly be considered as a creditor's suit; although it is not expressly alleged to have been instituted for the benefit as well of the creditors of the testator, as of these plaintiffs; and that the order directing notice to be given to the creditors of the late *Philip Hammond* to bring in their claims, was, in every respect, proper; and must have the effect and operation of allowing a satisfaction to be awarded to those creditors who shall come in as thus warned, and of making a distribution of the residue of the estate among the respective claimants. And, moreover, that the injunction granted on the 29th of September last, to prevent the creditor, *Ridgely*, from proceeding at law on the judgment he had obtained against these executors, was proper and well warranted by the nature of the case.

In order to ascertain who are creditors, and also, where necessary, who are the next of kin of the deceased, the court directs public notice to be given by advertisements in newspapers, or

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(*k*) *Paxton v. Douglas*, 8 Ves. 520; *Gilpin v. Southampton*, 18 Ves. 469; *Drewry v. Thacker*, 3 Swan. 544; *Clarke v. Ormonde*, 4 Cond. Cha. Rep. 54.—(*l*) *Creuze v. Hunter*, 2 Ves. jun. 165; *Sims v. Ridge*, 3 Meriv. 458; *Powell v. Wallworth*, 2 Mad. Rep. 183; *Edmunds v. Acland*, 5 Mad. 31.—(*m*) *Lashley v. Hogg*, 11 Ves. 602; *Dyott v. Anderton*, 3 Ves. & Bea. 177; *Handford v. Storie*, 1 Cond. Cha. Rep. 414; *Strike's Case*, 1 Bland, 85.