

claimant to seek satisfaction for the residue from the next of kin, legatees, heirs or devisees to whom the other shares of the fund had been actually paid. But after the court has actually parted with the whole fund, upon a bill filed by a creditor, next of kin, heir, or devisee against those alleged representatives of the deceased, among whom the property had been distributed, the court will, upon proof of no wilful default on the part of such creditor, next of kin, heir or devisee; nor any want of reasonable diligence, compel the next of kin or distributees to pay or restore to such plaintiff that to which he may appear to be justly entitled. (*p*) But if the whole estate has been distributed and actually paid over to the *creditors* of the deceased, or in so far as it had been so actually paid away, then, as such creditors cannot be made to refund, claimants of, and under the deceased debtor, who may thereafter come in, can take nothing by their application; not upon the ground, that their claims are without foundation; but because by their negligence they have lost all means of relief. (*q*)

A publication warning all claimants, unknown to the court, to come in and file the vouchers of their claims against the estate, is a constructive notice, upon which it is presumed to be safe to proceed to make a distribution of it among all those who then, after such notice, shall have come in and made claim. That, however, cannot apply to a legatee, or any other claimant who then fails to come in and assert his right, but whose title appears upon the face of the proceeding; and who must, therefore, have a proportional share of the fund set apart for his satisfaction. (*r*)

Should a claimant find it necessary, for any purpose advantageous to himself, to introduce any matter, not apparent upon the face of the voucher of his claim, he may be permitted to do so by petition; or if the relief he seeks cannot be so obtained he may file a cross bill. (*s*) But the most usual way for a creditor to come in is by merely filing the voucher of his claim with such an affidavit

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(*p*) *Hercy v. Dinwoody*, 4 Bro. C. C. 268; *Good v. Blewitt*, 19 Ves. 337; *Gillespie v. Alexander*, 3 Cond. Cha. Rep. 330; *Greig v. Sumerville*, 4 Cond. Cha. Rep. 457; *David v. Frowd*, 7 Cond. Cha. Rep. 8; *Mitf. Plea*. 166; 2 Fow. Exch. Pra. 253, 279; *Strike's Case*, 1 Bland, 86; *Williamson v. Wilson*, 1 Bland, 441; *Dorsey v. Hammond*, 1 Bland, 468.—(*q*) *Lowthian v. Hasel*, 4 Bro. C. C. 168; *Hindman v. Clayton*, ante 337; 1798, ch. 101, sub ch. 8, s. 13.—(*r*) *Good v. Blewitt*, 19 Ves. 338; *Waite v. Temple*, 1 Cond. Cha. Rep. 162; *Anonymous*, 4 Exch. Rep. 72.—(*s*) *Latouche v. Dunsany*, 1 Scho. and Lefr. 149; *Strike's Case*, 1 Bland, 86.