

that when the same person has both funds in him, it could not be indispensably necessary to * have any such account taken; because it was immaterial, as to such person, out of which **58** fund, the real or personal estate, the debt was paid—and therefore the suit was allowed to proceed against his heir without making his personal representative a party. *Williams v. Williams*, 9 *Mod.* 300; *Daniel v. Skipwith*, 2 *Bro. C. C.* 155; *Holland v. Prior*, 7 *Cond. Cha. Rep.* 25; *Tyson v. Hollingsworth*, 2 *Bland*, 330, note. So here, these children of William Wyse, deceased, being entitled to the real estate as his heirs, and to the personal as his next of kin, they had both funds in them, the realty by descent, and the personalty left in the hands of Rachel Wyse, the late administratrix, as next of kin: so circumstanced, it is immaterial as to them, out of which fund the debt is paid, whether from the real or the personal estate; since, as the plaintiff's claim has been established, it must, in any event, be satisfied out of property to which they would otherwise be entitled. And therefore it appears upon the face of these proceedings, that the suit may well be permitted to go on without making the personal representative of Rachel Wyse, deceased, a party.

Supposing, however, all that has been said as to the liability of these heirs in respect of the real estate in their hands, to be erroneous, yet there cannot be a doubt as to the liability of this administrator *de bonis non*, Joseph Allender, to the extent of the assets he admits he has in his hands. As against him, the claim of the plaintiff Tessier, is unquestionable, and in every point of view incontrovertible. The defendant Allender, it is true, states his ignorance of it in some particulars; but he has sustained no manner of defence against it; and therefore, upon every ground of law and equity, the plaintiff Tessier, must be entitled to obtain satisfaction to the full amount, or at least, to the extent of a due proportion of the assets admitted to be in the hands of this administrator *de bonis non*. So that if this bill were to be totally dismissed as against these heirs, and Riston who claims under some of them, as regards the realty; yet it must be sustained as a creditor's suit against this administrator *de bonis non*, alone; since it has been firmly and well settled, by a long course of practice, that this Court may, under a bill of this kind, assume the administration of the personal estate, for the benefit of all the creditors of the deceased, at the instance of any one creditor on behalf of himself and others, as against the executor or administrator

* alone. 1 *Mad. Pra. Cha.* 578; *Mitf. Plea.* 166; *David v.* **59** *Froud*, 7 *Cond. Cha. Rep.* 8; *Hammond v. Hammond*, 2 *Bland*, 307; *The Bank v. Dugan*, 2 *Bland*, 254. So far as the personal assets in the hands of this administrator *de bonis non* will go, the plaintiff Tessier, must have awarded to him the relief he asks, even if he should have to turn round afterwards to recover the unsatisfied