

DEBTOR AND CREDITOR.—*Continued.*

- which implies an abandonment of such a defence, or that the claim is to be met upon its merits. *Ib.*
7. The general rule is that no one can be allowed to intrude himself upon another as his surety; and therefore if a man voluntarily pays the debt of another, without any agreement to that effect with the debtor, he cannot take the place of the creditor, or recover of the debtor the money so paid. *Winder v. Diffenderffer*, 155.
 8. The doctrine of substitution embraces only those cases where there is a principal debtor and a surety by express or implied contract; or where, for the benefit of commerce, a man is allowed officiously to place himself in the condition of a surety; or where he has by mistake, as in the case of an executor, made payment as if he had stood in that situation. *Ib.*
 9. The marshalling of securities is only made where the debt is so secured as to give to the creditor the means of obtaining payment out of the two funds, and others can reach only one of them. In such case the Court will compel the creditor who holds the more comprehensive security to obtain payment, as far as practicable, out of the fund which the other creditors cannot reach; so as to leave the other fund to be distributed among the creditors holding more limited securities. *Ib.*
 10. In a creditor's suit the case may be submitted, to obtain a decree for a sale, without having been regularly set down for hearing. *Campbell's Case*, 195.
 11. During the pendency of a suit, a defendant cannot encumber or sell the estate to the prejudice of a plaintiff who may have a claim upon it, or of a party who, as a creditor, may have a right to have it sold as assets to be applied in satisfaction of the deceased's debts. *Ib.*
 12. Formerly the estate of a lunatic might be saved as far as practicable: and as regarded infant heirs and devisees, the parol might demur; but now, on the answer of a lunatic by his committee, or an infant by his guardian *ad litem*, in a creditor's suit, a sale of the realty may be at once decreed to pay debts. *Ib.*
 13. A devise for the payment of debts if sufficient and effectual for that purpose is valid, and creditors can only take the estate devised, but if the property devised is insufficient, it is void as to creditors. *Ib.*
 14. An Act giving authority to mortgage the real estate of a deceased person for the payment of his debts, may bind his heirs and devisees who applied for it, but it cannot affect the rights of his creditors. *Ib.*
 15. Although bond and simple contract creditors, as such, have no lien on the real estate of their debtor, yet no alienation of the heir or devisee to their prejudice, after a creditor's suit has been commenced, can be sustained. *Ib.*
 16. To constitute such a *lis pendens* in this Court it is sufficient that there be a bill filed and a subpoena returned served in a suit, the object of which is to affect the right to the debts. *Ib.*
 17. Several suits, the objects of which are to have the same estate applied in satisfaction of the same set of creditors, may be consolidated. *Ib.*