

brought before the court. But, admitting, that he had not by his petition to have the proceeds paid to him submitted to be treated as a party, as a co-obligor who is insolvent need not be made a party; *Key*, who was alleged and shewn to be so, was not a necessary party; since no decree against him could be of any avail; and his answer, as such, could not be read against any other party. Consequently, all further proceedings against him being useless, the case as to him also was thus brought to a final close.

But *Stone & McWilliams*, by their petition, stated that they were judgment creditors of *Jeremiah Booth*, deceased, who had died without leaving personal estate sufficient to pay his debts; or any other real estate than that which had been sold under the decree in this case, leaving a large surplus of the proceeds of sale still undisposed of; and that his administrator *John Llewellyn*, was dead, leaving a widow *Mary*, who was the daughter and only heir of *Booth*. This new cause of complaint, thus ingrafted by this petition upon the remaining stock of this case, gave to it an entirely new character, and converted it into a creditor's suit against the heir of *Jeremiah Booth*, deceased.

As regards the claim of *Stone & McWilliams*, as here presented in conflict with that of the heirs of *Richard Jordan*, deceased, there can be no occasion, at present, to notice the heir of *Booth*; and the case, as to her, may, so far as regards the question now to be determined, be considered as finally closed; since it has been thus, in fact, reduced to a mere contest between these two rival creditors of *Jeremiah Booth*, deceased, arising out of their respective claims to a preference of satisfaction out of the surplus of the proceeds of the sale of his real estate.

It has been urged, that *Jeremiah Booth* had at no time, during his life, any thing more than a mere imperfect right or equitable interest in the real estate from the sale of which this surplus has arisen; and that his estate was not one upon which the judgment of *Stone & McWilliams* could give them a lien.

This objection points to a portion of our law of a most important bearing, and of frequent application; and yet is one which has not, that I know of, been any where carefully examined and considered. I shall, therefore, avail myself of this occasion to take a more comprehensive view of the subject than might otherwise have been deemed necessary for the determination of this case.