

CREDITOR'S SUIT.

- A plaintiff is not bound to use active diligence against his debtor.—*Tessier v. Wyse*, 35.
- The plaintiff need not allege and shew, that the personal estate of the deceased is insufficient; that being a question between the heir and executor, 43, 49.
- An heir, devisee or next of kin, or any one claiming under them, may by a creditor's suit have the creditors called in and satisfied, 36.
- A creditor cannot be made to exhaust one species of his debtor's property, as the personalty, before he is allowed to go against another, as the realty, 37, 43.
- In a creditor's suit, by a bond creditor, apart from any statute, the personalty, as the natural fund will be first applied, 42.
- Neither the statute making lands liable to be sold for the payment of debts, nor any of the acts of Assembly have made any alteration in the principles by which a creditor's suit is governed in regard to the application of the real and personal estate of a deceased debtor, 44, 53.
- The acts allowing creditors to obtain satisfaction from the escheatable estate of their debtor, do not affect their rights or their mode of proceeding against the heirs or devisees of their deceased debtor, 53.
- Where the then defendants are entitled to both personal and real estate, the personal representative of a deceased debtor need not be made a party, 57.
- Even if the bill should be dismissed as to the heirs, yet relief may be had against the administrator to the extent of assets in his hands, 58.
- No dilatory proceeding or postponement to be allowed in a creditor's suit in favour of a lunatic, 50.
- Under a creditor's suit against the state, escheated lands may be sold and the proceeds distributed without preference, and only among citizen creditors, 53.
- A purchaser may be directed to pay a creditor out of the unpaid purchase money.—*Coomb v. Jordan*, 286, 294.
- A creditor's suit which had performed its office as to them, continued as a suit by the defendant's heirs against the purchaser, and then as to his heirs again converted into a creditor's suit, 294.
- Where a judgment has abated by death during the continuance of the lien, the plaintiff or his representative may come in under a creditor's suit and have the benefit of such lien without reviving at law, 326.
- A creditor's suit does not abate by the death of a plaintiff or any creditor who may have come in, if there be then a plaintiff or creditor competent to prosecute the suit.—*Austin v. Cochran*, 339.
- But a creditor's suit will abate by the death of a defendant, heir or devisee, whether there be any surplus of the proceeds of sale to be returned to him or not, 340.
- Where it appears that there is, or has been any personal estate, the executor or administrator should be ordered to account.—*Simmons v. Tongue*, 352.
- A decree for a sale establishes the plaintiff's claim, and the insufficiency of the personal estate, 353; *McCormick v. Gibson*, 501.
- Where a creditor neglects, on being actually notified, to come in under a creditor's suit against the estate of the deceased as his principal debtor, such debtor's sureties will be discharged.—*Simmons v. Tongue*, 354.
- Where it appears doubtful upon the face of the voucher, the claimant must shew whether the deceased was principal or surety, 358.
- The original bond, bill, or note should be produced; or, if lost, an authenticated copy or other proof, 358.
- No claim can be admitted which did not exist as such against the deceased, 359.
- Claims withdrawn for the purpose of being re-stated, the re-statement considered as an amended bill, 359.
- Where creditors come in so late as to require the distribution to be re-cast, they must defray the expense of the re-statement, 360.
- Where there are a multitude of claims, after the auditor's first statement of them, time is allowed for investigation, 359.
- If a mortgagee or incumbrancer comes in under the decree, he will be bound by it.—*Post v. Mackall*, 495.
- Where there appears to be an outstanding incumbrancer, the surplus of the purchase money will not be paid to the defendant to the prejudice of the purchaser, 495.
- When the statute of limitations is relied on in general terms it is applied according to the nature of the claim; is only to prevail as it may apply to the representative of the realty or personalty; and runs up to the time of filing the voucher, 498.
- An objection in bar, or a plea of limitations can be received only from him who has something to protect by it; and a plea of limitation enures only to the benefit of him who relies on it, 499, 525; *McCormick v. Gibson*, 500, 508; *The Cape Sable Company's case*, 672.
- The mode of distribution where there are conflicting pleas of the statute of limitations.—*Post v. Mackall*, 525; *McCormick v. Gibson*, 500.