

And it will, in some cases, assume the distribution of the estate of a living insolvent debtor among his creditors.

The foundation of this jurisdiction is the principle that equality is equity.

The privilege formerly granted to infants of allowing the parol to demur until they attained their full age has been abolished as regards creditor's suits, and the real estate of a deceased debtor, whose personalty is insufficient, may be sold, notwithstanding the minority of the heirs or devisees.

The plaintiff must have an interest in common with the other creditors; and therefore a mortgagee, or a vendor, having an equitable lien, cannot, merely as such, sustain a creditor's suit. (*d*)

A creditor's suit may be engrafted on another suit having a different object.

The general rule is that all persons having an interest in the object of the suit ought to be made parties, but the practice, as regards defendants, is to stop short at the personal representatives of the deceased, unless special circumstances should require others to be brought in.

If the deceased left no personal estate, or no administration has been granted, a creditor's suit may be maintained against the heirs and devisees of the deceased debtor without making his personal representatives parties.

In some cases the surviving partner of the deceased, or a third person having possession of assets, should be made a party defendant.

It is unnecessary to describe particularly in the bill the real estate of the deceased.

The other creditors should be called in to participate as co-plaintiffs.

Where a creditor may sue, either for his own claim alone, or as well in behalf of others as of himself, he should, by averment in the bill, make his election to sue in the one way or the other.

But in general, it is the nature of the case which gives to it the character of a creditor's suit. (*e*)

Duties and powers of the guardian *ad litem* of an infant defendant.

When the answer of an infant defendant by guardian is conclusive against him.

Simple contract creditors cannot sue and recover, at law, from the heir, merely in respect of assets descended; but must file a creditor's bill.

307 The claims of all, or of some one of the creditors; and the insufficiency * of the personalty must be established, in order to obtain a decree for a sale of the realty.

If the fact of the insufficiency of the personalty be denied, an account thereof must be taken, and the creditors notified to file vouchers of their claims before there can be a decree for a sale.

Order in which funds are to be distributed: *Dorsey v. Hammond*, 1 Bland, 463; *Chuse v. Lockerman*, 11 G. & J. 185; *Hoye v. Brewer*, 3 G. & J. 153.

As to creditors' suits to set aside fraudulent conveyances, &c., see Rev. Code, Art. 65, sec. 101; *Kipp v. Hanna*, ante, 26; *Swan v. Dent*, 2 Md. Ch. 111, note; *Morsell v. Ogden*, 22 Md. 391; *Shaferman v. O'Brien*, 28 Md. 565; *Mayfield v. Kilgour*, 31 Md. 240; *Wanamaker v. Bowes*, 36 Md. 42; *Walter v. Riehl*, 38 Md. 21; *Rhodes v. Amsinck*, 38 Md. 345; *Trego v. Skinner*, 42 Md. 426; *Gebhart v. Merfeld*, 51 Md. 322; *Bank v. Yeatman*, 53 Md. 443; *Totton v. Brady*, 54 Md. 170; *Goodman v. Wineland*, 61 Md. 449.

(*d*) Cited in *Andrews v. Scotton*, post, 660.

(*e*) See *Gibson v. McCormick*, 10 G. & J. 65, to same effect.