

A mortgage creditor, after having exhausted the mortgaged estate by a sale, may come in against the other estate of his debtor, *pari passu* with the other creditors.

The property of the deceased debtor must be applied, 1. In discharge of all costs, so as thus to make the creditors contribute in due proportion to the expense of the suit. 2. In the payment of the public dues, taxes, and levies. 3. In discharge of each mortgage, equitable lien and judgment, according to its respective priority. 4. In payment of the creditors in due proportion.

Where a devise, for the payment of debts, is sufficient and effectual, the creditors can only come in as the will directs; but if it be insufficient or ineffectual, it is fraudulent and void as against them.

The personal estate, being the natural fund for the payment of debts, if the heir or devisee pay the debt, he may obtain reimbursement from the personalty.

If a creditor is entitled to any interest, it is as much a debt as the capital itself.

Interest is given in almost all kinds of cases, and equity allows it in every case where, under like circumstances, it might be recovered at law. (l)

The auditor's statement allows interest to the claim of each creditor if entitled to it, and the aggregate thus shown is considered as the liquidated debt then due to each.

If the statement is confirmed the whole carries interest from the date to which the confirmation relates.

No interest is allowed upon costs.

The rule for computing interest in all cases where the debt carries interest, and the debtor has made partial payments, is, that the interest is calculated from the time the debt became payable down to the day of the first payment, and the interest is added to the principal,—then the payment is deducted from the whole, and if such payment satisfies the whole interest and a part of the principal, the interest is calculated upon the balance of the principal to the day of the second payment, from the whole of which the second payment is deducted, &c. But if the first payment does not discharge the whole interest, then, after applying it to the satisfaction of so much of the interest, the interest is calculated upon the principal only, until the day of the second payment, which is deducted from the whole amount, and so on. So that in no way is any interest calculated and paid upon interest. (m)

(l) See note (m).

(m) INTEREST.—Interest is recoverable as of right upon contracts to pay money on a day certain, as upon bills of exchange and promissory note, upon contracts where it has been stipulated for; in cases where the money claimed has been actually used, and upon bonds, &c. But in other cases it is a question for the jury to be decided according to the circumstances of the particular case. *Newson v. Douglass*, 7 H. & J. 418, and cases there cited in note (b). The general rule at common law was to allow interest only upon mercantile contracts, or upon an express promise to pay it, or where such promise was to be implied from the usages of trade, or other circumstances; leaving it in other cases to be determined by the jury according to the equities of the transaction. *Railway Co. v. Sewell*, 37 Md. 452; *Musgrave v. Morison*, 54 Md. 166.

When a plaintiff is entitled, *ex aequo et bono*, to recover money, it includes interest as well as principal, unless there is something which would render