

the administration of the assets of the deceased for the general benefit of his creditors. *Ellicott v. Welch*, ante, 242.

But, in so far as a mortgagee or the holder of a vendor's lien has a claim beyond the extent of such lien, because of the deficiency of the premises to pay the debt, or because of some other claim, in addition to such debt, which there is not a sufficiency of personal estate to satisfy, he may, in respect of such claim, sustain a creditor's suit by thus blending two distinct causes of suit, in only one of which the other creditors have a common interest. As where a vendor, in addition to a balance of the purchase money, set forth a large claim as due to him on another account, to pay which he alleged, that the personal estate of the deceased was insufficient; the case was treated as a creditor's suit; because, as regarded such additional claim, the plaintiff had an interest in common with the other creditors who he undertook to represent; and for whose general benefit it was necessary that the Court

346 * should assume the administration of all the assets of the deceased debtor. *Bedford v. Leigh*, 2 Dick. 707; *Charles v. Andrews*, 9 Mod. 153; *Shephard v. Lutwidge*, 8 Ves. 29, note; *Jarrett v. Rider*, 9th July, 1829. (t)

And there are likewise instances in which a creditor's suit may be engrafted upon another suit; which, in its origin and object, had no relation whatever to a case of debtor and creditor; or in which the only object was to enforce a lien, such as a mortgage or vendor's lien, for the payment of a single debt. As where a mortgagee had filed a bill against the heirs of a mortgagor to obtain a sale of the mortgaged realty for the payment of his debt; or where a bill had been filed to obtain a partition of an intestate debtor's real estate; or where the real estate of a deceased debtor had been or was about to be sold under the special provisions of an Act of Assembly, 1785, ch. 72, s. 12; 1816, ch. 154; 1818, ch. 133; 1831, ch. 311; or where in any such case a share of the proceeds of sale was about to be awarded and paid to parties as heirs or devisees of a deceased debtor, *Lewis v. Lewis*, 27th April, 1829, MS., any creditor of the deceased may come in, by petition, for himself and on behalf of the other creditors, without calling in his executor or administrator as an additional party to such pending suit, and

(t) *WASHINGTON COLLEGE v. GRAVES*.—It was alleged, that the mortgaged real estate was insufficient to pay the mortgage debt; and that the whole estate, real and personal, of the deceased mortgagor, was insufficient to pay his debts. Whereupon it was prayed, that the whole, including his unincumbered real estate, might be sold to satisfy the mortgage and other creditors. The facts being admitted, the case was considered and treated as a creditor's suit; and on the 26th of June, 1830, Decreed accordingly, that the real estate in the proceedings mentioned be sold, &c.; and that notice be given to the creditors of the deceased to file the vouchers of their claims. &c. MS.