

If any one of the creditors has received a part of his claim from the estate of the debtor, he cannot be allowed to obtain any thing more, until the other creditors have received satisfaction in the same proportion; *Sheppard v. Kent*, 2 Vern. 435; *The Case of Sir Charles Cox*, 3 P. Will. 344, n; *Shiphard v. Lutwidge*, 8 Ves. 29; *Jennings v. Elster*, 7 Cond. Cha. Rep. 115; but a mortgage creditor, after having exhausted the mortgaged estate by a sale, may come in against the other estate of his debtor for the deficiency *pari passu* with the other creditors. *Tooke v. Hartley*, 2 Bro. C. C. 126; *Shiphard v. Lutwidge*, 8 Ves. 29. This, however, does not extend so far as to compel any creditor to bring back into hotchpot any payment he may have fairly received. *Lowthian v. Hasel*, 4 Bro. C. C. 168. An heir or devisee was allowed formerly to retain, for the same reason, that an executor or administrator was allowed to retain, an amount equivalent to the satisfaction of his debt, in preference to others. *Loomes v. Stotherd*, 1 Cond. Cha. Rep. 235; *Nunn v. Barlow*, 1 Cond. Cha. Rep. 301. But as it has been declared, that the claim of an executor or administrator shall only \* stand upon an equal footing with other claims of the

**385** same nature; 1798, ch. 101, sub-ch. 8, s. 19; and as it had been previously declared, that an heir or devisee should pursue the same rules in the payment of debts out of the real assets as were prescribed for an executor or administrator; 1785, ch. 80, s. 7; it would seem to follow, that the claim of an heir or devisee should now, in like manner, be held to stand only upon an equal footing with all other claims of the same nature; and be allowed to retain only for a due proportion. *Player v. Foxhall*, 1 Russ. 538; *Winter v. Hicks*, 5 Cond. Cha. Rep. 490.

Here, however, it may be well to observe, that although it is directed, by an Act of Assembly, that all judgments against the deceased shall be first discharged, if the assets be sufficient; but if not, and there be more judgments than one, a proportionable division of the assets shall be made among them, in affirmance of the common law, as to the personalty; *Will. Ex'rs*, 660; and then, it is further declared, by the same Act of Assembly, that, in case there be not personal estate sufficient, the heir or devisee shall pursue the rules and directions aforesaid, in the payment of the debts of the deceased; and that all Courts of law and equity shall observe those rules and directions. 1785, ch. 80, s. 7. Yet as nothing is said, in that legislative enactment, as to any lien upon the real or personal estate; and, as it would be impracticable, in many cases, to satisfy judgments in due proportion only; and at the same time sustain the liens of mortgagees and vendors, it has been always held, that notwithstanding what is said in that Act of Assembly, all liens upon the realty must remain in full force; and that the rules therein laid down can only apply where no such lien exists on the personal estate by a *fieri facias* actually delivered to