

The auditor's report confirmed as to all claims not objected to by him.

Where it appears from the voucher filed by a creditor as evidence of his claim, that the deceased was jointly liable with others, the creditor must shew whether or not the deceased was equally bound as a debtor, or as principal, or surety; or whether he was bound with others as co-surety.

If he was bound as principal, then the creditor is allowed to come in for the whole amount; otherwise for only a proportion of his claim.

The reasons and grounds of these rules examined and considered.

The interests of infant defendants should be protected as far as practicable: but the parol cannot demur; nor can the claims of others be in any way impaired in their favor.

The course of proceeding against persons *non compos mentis*, and against *femes covert*.

Where the debt is joint and several all the debtors must be brought before the Court: the exceptions to this rule.

The general rule, that all persons interested must be made parties, is made to yield where necessary, either as to plaintiffs or defendants.

A creditor's suit does not profess to be the demand of a single creditor: but is a call for the administration of the estate for the benefit of all.

The principles of law and equity in relation to principal and surety.

The principles of equity in relation to the marshalling of assets and securities.

Where a creditor has his debt secured by a lien or mortgage upon two funds, and another has an interest in only one of the funds, he may compel the one whose debt is secured by both to resort to the other, so far as it may be necessary to satisfy both claims.

This equity is never administered *ex officio*, nor at the suit of the debtor, but only at the instance of one creditor against another; by which the debtor may, nevertheless, indirectly derive benefit. (b)

But the assets can never be marshalled to the prejudice of the creditor, or so as to suspend or put in peril his claim, or upon any other terms than giving him entire satisfaction.

In cases of bankruptcy, wherever the creditor holds a double security he may make choice of either or pursue both, so he does not obtain a double satisfaction.

In such cases the creditor himself makes choice of the security from which he will obtain satisfaction, and the bankruptcy Court, so far from lessening the obligation of any of his securities, or driving him from any one of them, will assist him in enforcing his contract to the extent of its jurisdiction, so as to insure to him one complete satisfaction. (c)

But in equity, in creditor's suits, the Court officiously interferes and throws upon the creditor the burden of showing whether the deceased was principal or surety, or co-surety; and then, unless he also proves, that the co-surety or principal debtor is insolvent, pushes the creditor partially or entirely away from that portion of his security by which the deceased's estate might have been made liable.

(b) Approved in *Gen. Ins. Co. v. U. S. Ins. Co.* 10 Md. 528. See also as to marshalling assets, *Woollen v. Hillen*, 9 Gill, 186, note (c); *Chase v. Lockerman*, 11 G. & J. 185; *Brown v. Freestone Co.* 55 Md. 547.

(c) Approved in *Garey v. Hignutt*, 32 Md. 560; *Zollickoffer v. Seth*, 44 Md. 376. See *Buchanan v. Bordley*, 4 H. & McH. 41.