

DEBTOR AND CREDITOR.—*Continued.*

56. 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. *Ib.*
57. If the statement is confirmed the whole carries interest from the date to which the confirmation relates. *Ib.*
58. No interest is allowed upon costs. *Ib.*
59. The rule for computing interest in cases where the debt carries interest, and the debtor has made partial payments. *Ib.*
60. 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. *Ib.*
61. 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. *Ib.*
62. 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. *Ib.*
63. In a creditor's suit, creditors who come in after answer, and before a decree, cannot have their claims so put in issue as to be adjudicated upon by the decree; yet such creditors may well be heard as to the selection of a trustee to make the sale. *Watkins v. Worthington*, 486.
64. In the appointment of a trustee the recommendation of those creditors who shew the greatest amount of debts will be allowed to have the most weight. *Ib.*
65. The auditor's report confirmed as to all claims not objected to by him. *Ib.*
66. 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. *Ib.*
67. 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. *Ib.*
68. Where the debt is joint and several all the debtors must be brought before the Court; the exceptions to this rule. *Ib.*
69. 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. *Ib.*
70. The principles of equity in relation to the marshalling of assets and securities. *Ib.*
71. 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. *Ib.*
72. 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. *Ib.*
73. 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. *Ib.*