

should assume the administration of all the assets of the deceased debtor. (*m*)

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; (*n*) 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, (*o*) 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 have the surplus, or the whole proceeds of sale; or the share to which the deceased debtor may be entitled; and which then remains subject to the control of the court, applied in satisfaction of his debts; upon which all the proceedings are taken together as forming one creditor's suit, as to the whole, or the particular share, and are so treated accordingly through all its subsequent stages. (*p*) The object of the secondary proceeding, in such instances, being to intercept the assets, and prevent their misapplication is, in effect, a prayer for relief against the proceedings in the original suit; and is a kind of engraftment of a scion of a different species upon a then growing stock. (*q*)

(*m*) *Bedford v. Leigh*, 2 Dick. 707; *Charles v. Andrews*, 9 Mod. 153; *Shepard v. Lutwidge*, 8 Ves. 29, note; *Jarrett v. Rider*, 9th July, 1829.

*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. M. S.

(*n*) 1785, ch. 72, s. 12; 1816, ch. 154; 1818, ch. 133; 1831, ch. 311.—(*o*) *Lewis v. Lewis*, 27th April, 1829, M. S.—(*p*) *Fenwick v. Laughlin*, 1 Bland, 474; *Gaither v. Welch*, 3 G. & J. 264.—(*q*) *Park. His. Co. Cha.* 506.