

WELCH v. STEWART.

In a creditor's suit, the decree for a sale establishes the plaintiff's claim; unless it be otherwise declared; except as regards a fraud not put in issue and decided on by such decree. A plaintiff cannot be permitted to split up and multiply his causes of action; and therefore, if he knowingly withholds a part of his claim until after the decree for a sale, it will be rejected; but without prejudice. In a creditor's suit the statute of limitations continues to run against a creditor who comes in, before or under the decree, until he files his petition or the voucher of his claim; but no one can rely on the statute against a claim, after any act done, or sanctioned by him, which implies an abandonment of such a defence, or that the claim is to be met upon its merits.

THIS bill was filed on the 2d of August, 1827, by *Robert Welch*, of *Ben.* and others, as creditors of *David Stewart*, deceased, against *Henry H. Stewart* and others, the administrator, heirs and legal representatives of the late *David Stewart*. The bill sets forth, that the late *David Stewart* was indebted to several persons in the manner described, to which claims the plaintiff *Welch* had become entitled; that the deceased debtor had, in his life time, conveyed certain property in trust for the benefit of the creditors named in the deed of trust, some of which claims are those which have been assigned to the plaintiff *Welch*; that the late *David Stewart* died siezed and possessed of other property, not so specially appropriated; and that his whole estate, both real and personal, was insufficient to pay his debts. The heirs, administrator and trustee, who were all made defendants, by their answers, admitted the truth of the allegations of the bill. Whereupon it was DECREED, that the estate be sold; that notice be given to the creditors of the deceased to come in; and that the administrator account. The property was accordingly sold. After which, on the 4th of December, 1828, *Evans* and others, filed their petition, stating that they also were creditors of the deceased; and that they objected to the allowance of certain claims of the plaintiff *Welch*.

The auditor, on the 4th of February, 1829, reported a statement of the claims of the plaintiffs, and others who had come in as creditors of the deceased. *Evans* and others excepted to the account allowing the plaintiff *Welch's* claims, Nos. 1, 2 and 5; because they had not been established by any evidence, as against them and others, the creditors of the late *David Stewart*; and for these reasons they, in like manner, objected to the allowance of the