

sufficient to pay his debts; the personal credit having ceased, and all hope of obtaining payment, by the personal exertions of the debtor, having come to an end, the estate, as in cases of bankruptcy in England, is treated as a dead fund, as a kind of shipwreck, in which there can only be a salvage of a part to each creditor. (q) Under such circumstances, it has long been the practice of this court, as the best method of settling the proportions among the creditors, to have a statement made by the auditor, of the aggregate amount of the principal and interest of their respective claims, as of the day of the sale of the real estate, which, when confirmed, operates as a judgment in favour of each from that day. And, as, in all cases, where the estate is sold on a credit, the purchase money is made to bear interest from the day of sale; the aggregate amount, thus found due to each creditor, is that amount upon which a proportional dividend of the proceeds of the estate is to be awarded to each, with a similar proportion of the interest which may be paid on the purchase money. So that, where the creditors of an insufficient estate, have been delayed by a sale for their satisfaction on a credit, they may have the interest, on the dividends of their respective claims, met and reimbursed by the interest arising from the purchase money of the estate sold. (r)

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; (s) 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. (t) This, however, does not extend so far as to compel any creditor to bring back into hotchpot any payment he may have fairly received. (u) 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. (w) But as it has been declared, that the claim of an executor or administrator shall only

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(q) *Ex parte Bennet*, 2 Atk. 527.—(r) *Jacob v. Suffolk*, Mosely 27; *Neal v. The Attorney-General*, Mosely 247; *Corrie v. Clarke*, 1 Bland, 86, note; *Dorsey v. Hammond*, 1 Bland, 468; *Tyson v. Hollingworth*, ante 333; *Pattison v. Frazier*, ante 372.—(s) *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.—(t) *Tooke v. Hartley*, 2 Bro. C. C. 126; *Shiphard v. Lutwidge*, 8 Ves. 29.—(u) *Lowthian v. Hasel*, 4 Bro. C. C. 163.—(w) *Loomes v. Stotherd*, 1 Cond. Cha. Rep. 235; *Nunn v. Barlow*, 1 Cond. Cha. Rep. 301.