

make the creditors contribute in due proportion to the expense of the suit; (e) next in the payment of the public dues, taxes and levies; then in discharge of each mortgage, equitable lien, (f) and judgment according to its respective priority; recollecting, that the lien and priority of a mortgage is confined to the principal sum particularly mentioned and expressed, to be secured thereby; (g) and after that in payment of the creditors in due proportion; to the satisfaction of all which the real estate has been made alike liable, by statute, without preference. (h)

No man can be compelled to institute a suit for the recovery or establishment of his rights; because, as to the disposition of his own peculiar rights and property, his will stands for a law. But no one can be permitted either to use, or to neglect to use, his rights to the prejudice of others. Hence, if a prior mortgagee attempts to use his incumbrance as a protection of the property of his debtor, it will be deemed a fraud upon the other creditors; and his lien will be postponed until the injured and junior incumbrances have been satisfied. And so, too, where a creditor has a lien upon a particular fund, which has been previously mortgaged or incumbered, he may come here and redeem the property from such prior incumbrance, so as not to permit him to neglect to establish and receive his debt to the prejudice of others, who have an interest in the proper application of the surplus. (i) The personal estate of a deceased debtor must be first applied in payment of his debts, and then distributed among his next of kin or legatees; and where his personal estate is insufficient to pay his debts, a right accrues to all his general creditors to have his real assets administered in equity for their benefit, because of their having a lien upon them, as against his heirs and devisees, arising from the statute which subjects real estate to the payment of debts, (j) which they have no other way of making available than in a court of equity. (k) And, therefore, a next of kin, legatee, heir, or devisee, having an interest therein, has a right to redeem any outstanding incumbrance upon those assets; or, in other words, to bring all who have a prior, or equal claim, upon them here as parties, to have their rights adjusted and satisfied, so as to clear the

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(e) *Loomes v. Stotherd*, 1 Cond. Cha. Rep. 236; *White v. Peterborough*, 4 Cond. Cha. Rep. 185; *Dorsey v. Hammond*, 1 Bland, 468.—(f) *White v. Casnave*, 1 H. & J. 166.—(g) 1825, ch. 50.—(h) 7 Geo. 2, C. 7.—(i) *Powel Mortg.* 281, 610.—(j) *Martin v. Martin*, 1 Ves. 214; *Chalmer v. Bradley*, 1 Jac. & Wal. 59.—(k) *Hindman v. Clayton*, ante 337.