

estate, that the surplus may be distributed among the next of kin, legatees, heirs, or devisees, of the deceased. (l)

Hence, although it is clear that a creditor cannot be deprived of any lien he may hold upon property in a suit to which he is not a party; (m) yet, if he should attempt to proceed upon his lien to

(l) *Francklyn v. Fern*, Barnard. Rep. 30; *Brooks v. Reynolds*, 1 Bro. C. C. 183; *Perry v. Phelps*, 10 Ves. 39; *Greig v. Somerville*, 4 Cond. Cha. Rep. 453; *Shewn v. Vanderhorst*, 4 Cond. Cha. Rep. 458.

ANDERSON v. ANDERSON.—This bill, filed on the 20th of November, 1788, states that the late Rebecca Anderson, by her will, gave to the plaintiffs certain legacies, and charged the payment of them upon her real estate, which she devised to James Anderson; that the testatrix was indebted by bond to Alexander Christie, and jointly bound with Ann Ogle to pay a composition of 6s. 8d. in the pound to the creditors of the said James Anderson, the devisee; that one of the legatees was dead, to whose legacy the plaintiffs were entitled as next of kin; that another legatee was dead, who, by his will, had given his legacy to one of these plaintiffs, and that a third legatee having married and died without issue, letters of administration had been granted to one of these plaintiffs; that the testatrix Rebecca Anderson left no personal estate, and that the devisee James Anderson had died leaving a daughter, the infant defendant, his sole heir. Whereupon it was prayed that the real estate so devised, might be sold, in the first place, to satisfy the debts of the testatrix Rebecca; and in the next place, the legacies given by her, and also the debts due by James Anderson, deceased, the devisee.

The infant defendant answered by her guardian *ad litem*, admitting the allegations of the bill, and alleged that Ann Ogle had paid the composition to the creditors of James Anderson, and having obtained an assignment of their claims against the estate of the testatrix, she, Ann Ogle, claimed contribution.

17th April, 1789.—ROGERS, Chancellor.—Decreed, that the real estate of Rebecca Anderson be sold, &c.; that James Hindman, the trustee, shall, on his receipt of the purchase money, first pay and satisfy to the said Alexander Christie, the said sum of £300 sterling, and interest of five per centum thereon from the date of the said bond, in current money, at sixty-six and two-thirds per cent. exchange. And to the said Ann Ogle one moiety of the said composition of 6s. 8d. in the pound of the debts of the said James Anderson, due and owing in London, and now assigned to the said Ann Ogle, the said moiety amounting to the sum of £2,464 15s. 4½d. sterling, with interest thereon of five per centum from the 8th day of August, in the year of our Lord one thousand seven hundred and seventy-four, in current money, at sixty-six and two-thirds per cent. exchange; and out of the residue of the money arising from such sale, pay the said legacies to the aforesaid persons respectively entitled to receive the same devised by the last will and testament of the said Rebecca Anderson to her daughter, and Harriet Rebecca, and her son William Anderson, with interest on the same of five per cent. respectively, from the first day of February, in the year seventeen hundred and seventy-six, in current money, at sixty-six and two-thirds per cent. exchange; and the surplus of the money arising from such sale, to pay and apply to the satisfaction and discharge of the debts due and owing from the said James Anderson, deceased, which there shall not be personal assets of the said James Anderson, in the hands of the said trustee, as his administrator, to discharge; a commission of four per cent. allowed to the trustee. The personal estate to be first applied before any of the said proceeds of sale, &c.—*Chancery Proceedings, lib. S. H. H. lett. B. fol. 620.*

(m) *Jones v. Jones*, 1 Bland, 452.