

at present to establish any general rule on the subject. There is nothing in the objection that the quantity of land sold has not been sufficiently ascertained. Order affirmed.

The plaintiffs by their petition stated, that the trustee *Foulke* had died, and thereupon prayed that some other person might be appointed in his stead.

1st March, 1827.—BLAND, Chancellor.—The plaintiffs by their bill do not profess to sue as well for the other creditors of *Stephen Scotton* as for themselves. From the facts which they set forth, it appears, that they were the holders of a vendor's lien to secure the payment of the balance of the purchase money; and as such, in their proceeding to have the land sold for the payment of their claim, they had no such common interest with the other creditors of *Stephen Scotton*, as would enable them to sustain a creditor's suit for the administration of his estate. (q) Yet from the manner in which the bill speaks of the insufficiency of the personal estate; and on having made *Ashur Foulke*, the administrator, a defendant, it may be inferred, that the plaintiffs contemplated their bill as the commencement of a creditor's suit. The decree of the 5th of April 1822, by reciting, that the deceased *Stephen Scotton* did not leave personal estate sufficient for the payment of his just debts; and by directing the land to be sold for the payment of the claim of the complainants and of such other debts of the deceased as should be established to the Chancellor's satisfaction, evidently considers the proceeding as a creditor's suit. But no notice has been directed to be given to the creditors of the deceased to bring in their claims; nor has any decree to account been passed against the administrator; on the contrary, all claim against him, as well by the plaintiffs to obtain satisfaction of their debt, as by these heirs to have the real estate descended relieved, by the application of the personalty which might be found in his hands, seems to have been wholly abandoned.

It now appears that the defendant, *Ashur Foulke*, the administrator, who had been appointed to make the sale, is dead; and that the suit had thus abated as to him. A suit which has abated as well in regard to the real as to the personal estate may be so revived as to proceed against either, leaving the abatement to stand as to the other. (r) So here, as this abatement does not

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(q) *Ellicott v. Welch*, ante 244; *Hammond v. Hammond*, ante 344.—(r) *Colegate D. Owings' case*, 1 Bland, 409.