

Court, appear to have been equally the objects of the testator's bounty, and it does not appear to have been his intention to encumber his lands in the hands of his devisee with the payment of the legacies.

The question, in the case now under consideration, is a very different one.

Here, James D. Mitchell became indebted to his sister, the complainant, by accepting the devises in his favor in his father's will, and by omitting (if he did omit) to do that which his father said he should do, or pay his sister five thousand dollars, which sum he charged upon the property devised to his son. There was no primary responsibility on the part of the son to pay the money. He became a debtor, no doubt, by accepting the devises to him, and failing or refusing to do what was required of him (if such be the fact), but still he became a debtor only in respect to the property devised to him, and even his personal contract to pay the money will not make his personal estate liable in the first instance, in exoneration of the property in respect to which only he became the debtor. The case of *Mattheson vs. Hardwicke*, already referred to, is conclusive of the point, unless its authority can be shaken, which I do not find anywhere even attempted.

There can be no doubt, and the principle is not disputed, that the personal estate is the natural and primary fund for the payment of debts and legacies, even where they are charged upon the real estate descended or devised, and that the real is only an auxiliary fund after the personalty is exhausted. Such is the language of the Court of Appeals in *Stevens vs. Gregg*. But the question still recurs, whether, with regard to this debt, there was any original primary responsibility resting upon James D. Mitchell to pay it? whether the personal obligation does not result from the devise to him, and his acceptance of the devise, and whether he did not become liable only in respect to the land devised? If so, as we have seen, even his personal contract to pay the money would not, in the case of his death, shift the primary liability from the real to the personal estate. The assent of Mr. Chancellor Kent to the doc-