

by force of this Act, notwithstanding the Lands, Tenements, and Hereditaments, to him or them devised, shall be aliened before the Action brought. Provided always, That this Act shall be in force for Three years, and to the end of the next Session of Parliament after the Expiration of the said Three years, and no longer. *Made perpetual by 6 & 7 W. 3, cap. 14.*

**576** \*II. Wills fraudulent against Creditors.

III. Debt upon a Bond jointly suable against the Heir and Devisee of an Obligor. Devisee chargeable for a false Plea, as an Heir.

IV. Devise for raising Portions, pursuant to a Marriage Contract, good.

V. If the Heir aliene before Action brought he shall be liable to the value of the Land. Creditors preferred, as in Actions against Executors.

VI. Upon *Riens per* Descent pleaded, Jury shall inquire of the value of the Lands. Otherwise, if Judgment by Confession, for Debt and Damages, Carthew, 353, 354.

VII. Devisee chargeable as Heir. To continue for 3 years.

This Statute<sup>1</sup> was designed to remedy certain defects in the Stat. 13 Eliz. c. 5, against fraudulent conveyances, *per* Lord Hardwicke in *Kinaston v. Clark*, 2 Atk. 204.

At common law, the debtor could disappoint his creditors<sup>2</sup> by devising his real estate to others than his heir at law, or even to his heir at law in a manner to break the descent. And where lands were suffered to descend to the heir, he might defeat the creditors by aliening those lands before action brought against him. For the creditor had no lien on the lands descended. He was unable, therefore, to follow it in the hands of a purchaser, and he was without remedy against the heir even for its value.

The second section of the Statute avoids all testamentary dispositions of lands whereof the testator, at the time of his death, was seised in fee simple in possession, reversion or remainder, or over which he had a general power of appointment, whereby creditors might otherwise be defrauded. And by the fifth and sixth sections the heir was made liable for the value of the lands aliened.

The remedy against the heir has proved efficient, and has been resorted to in modern times in England.

The remedy provided against the devisee was partial, and must have proved cumbrous. He was to be sued in *debt*, and therefore it was held

<sup>1</sup> For a clear statement of the common law as to the obligation of an heir for the debts of his ancestor and of the changes therein made by this Statute, see *Van Bibber v. Reese*, 71 Md. 608; also *British Co. v. Smart*, L. R. 10 Ch. 567; *White v. Kauffman*, 66 Md. 92; *Addison v. Addison*, 44 Md. 202.

<sup>2</sup> This means creditors by specialty solely, and as to them the heir was bound only in respect and to the extent of real assets descended. *Van Bibber v. Reese*, 71 Md. 608.