

that he was not answerable for obligations of the testator which sounded in *covenant* merely, *Wilson v. Knubley*, 7 East, 128; *Farley v. Briant*, 3 A. & E. 839. He was to be sued *jointly* with the heir, and therefore escaped where no heir could be found, *Hunting v. Shelldrake*, 9 M. & W. 256. The remedy at law was yet more seriously embarrassed by the provisions of the fourth section, which exempts from the operation of the Statute all devises or dispositions for payment of debts. Every such devise or charge for payment of debts gave occasion for equitable interference, and this change of jurisdiction was so early and so complete, that in the year 1744 Lord Hardwicke, with the aid of the solicitors engaged in *Galton v. Hancock*, 2 Atk. 430, could find no precedent of a judgment at law against the devisee and heir. This jurisdiction was found to be efficient and beneficial in its exercise. The lands charged were held to be equitable assets, and were applied indiscriminately to the payment of specialty and simple contract debts, and lands charged with payment of debts, lands simply devised, and lands descended were all brought into contribution and in due order, in the course of one proceeding.

Our Act. of 1785, ch. 80, sec. 7,³ subjects lands descended in the hands of the heir, and lands devised in the hands of the devisee, to the payment of all debts of the deceased, which may remain unsatisfied after application of the personal assets, and, reserving to judgment creditors the benefit of their liens, requires the distribution of real as well as personal assets to be made *pari passu* amongst all general creditors. The same section affirms the jurisdiction of equity to administer this relief. And by *the Act of 1785, ch. 72, sec. 5,⁴ equity may decree an immediate **577**

³ What follows in the text is an incorrect statement of this section of the act, but the matter has merely historical interest now. The reader is referred to Miller's Equity, sec. 373 and notes, for the history of legislation on this subject. And see note 4 *infra*.

⁴ The Act of 1818, ch. 193, first extended the provisions of this act and its various supplements to defendants of full age, and there have been subsequent amendments passed from time to time. See now Code 1911, Art. 16, sec. 218.

Nature of creditors' lien under this Statute.—This legislation goes much further than the Statute 3 and 4 W. & M., c. 14, and makes the land devised or descended liable to be sold for the payment of any demand due by the decedent if the personal estate left by him should be insufficient to discharge all his debts and the costs of administration. This liability is contingent or conditional, dependent on the insufficiency of personal assets, but it gives the creditor "some kind of a lien or *quasi* lien," enforceable in the manner provided by the statute. *Van Bibber v. Reese*, 71 Md. 608; *Macgill v. Hyatt*, 80 Md. 253; *McNiece v. Eliason*, 78 Md. 168; *Hardisty v. Hardisty*, 77 Md. 188.

Scope of Statute.—The statute applies only to a debt of the decedent for which he could be sued at the time of his death, not to a claim for unliquidated damages for a breach of a contract by decedent's heirs. *McGaw v. Gortner*, 96 Md. 489. Nor has a court jurisdiction under this statute to order the heirs of a deceased debtor from whom they inherited