

According to this rule, the mutation, from realty to personalty, can only be finally consummated by a series of separate and distinct acts: first, there must be a judgment or judicial authority given by the Court to sell; secondly, the commissioners, or agents employed to make the sale, must have reported to the Court, that they had, in pursuance of that authority, made a sale; thirdly, the Court must have ratified the sale so made and reported; and lastly, the purchaser must have either paid the purchase money or have given his bonds to secure the payment of it to the party entitled. When all these acts have been done, the judicial function of the Court, in relation to the subject, has finally terminated; and the fund which had been submitted to its operation has been, thereby, **454** * changed from one kind of property into another; from real into personal estate.

With regard to the mutation of the estate, the rule in equity seems to be different; or, at least, it appears to have been held, that all four of those several acts are not essentially necessary to produce a conversion of the property from realty to personalty. For, where, on a bill in Chancery to obtain a partition of the real estate of an intestate among his heirs, one of whom was then a *feme covert*; on the lands being deemed incapable of division, a decree was passed ordering them to be sold; and the trustee, appointed for that purpose, reported, that he had sold them accordingly; which sale was finally ratified by the Court. After which, and before the purchase money had been paid, and before any order had been passed by the Court, directing the manner in which the purchase money should be distributed, the *feme covert* died; and then her husband died. Upon which the interest of the *feme covert*, at the time of her death, was viewed in the nature of an equitable *chose in action*; her individual legal estate in the realty having been changed by the decree, the sale, and the ratification thereof, into a floating undivided interest of that kind.

Hence it appears, that, in equity, the mutation is effected by the mere preliminary operations of the Court, or by those judicial proceedings which are always had as preparatory only to that partition of the property among the parties which is the sole object of the suit. And it was further held, that although the husband was a party to the suit, yet he could not be considered as having, by those proceedings alone, reduced this interest of his wife's into possession; because the proceeding only directs a sale of the property, and the proceeds to be brought into Court. It professes not to ascertain the rights of the respective claimants; it makes no distribution, it awards no payment, either immediately or contingently, to husband and wife, or either of them; no such decree has passed as is equivalent to a judgment at law, which would vest the *chose* of the wife absolutely in the surviving husband; nor has any order been passed by the Court directing the proceeds to