462; *Trustees of the University* v. *Foy*, 2 *Haywood*, 310, 374; *Jones* v. *Crittenden*, 2 *North Carol. Law Repository*, 385; *Berry* v. *Haines*, 2 *Ib.* 428; *Allen* v. *Peden*, 2 *Ib.* 638; *Opinion of the Judges of Georgia*, 2 *Ib.* 31; *Per Judge Martin of Louisiana*, 2 *Ib.* 173; *Crane* v. *Meginnis*, 1 *G. & J.* 463; *Berrett* v. *Oliver*, 7 *G. & J.* 192; *Acts of Assembly of Maryland of* 1781, *ch.* 3; 1785, ch. 9; 1795, ch. 30; 1807, ch. 24, 52, 121, 138 and 149; 1808, ch. 17, 73 and 101; 1809, ch. 164; 1811, ch. 101; 1814, ch. 14; 1815, ch. 71; 1816, ch. 164; 1817, ch. 204; 1818, ch. 90; 1819, ch. 53; 1820, ch. 147 and 172; 1825, ch. 88; 1826, ch. 7 and 164; 1827, ch. 67 and 141.

With regard, therefore, to the case now under consideration, it follows from what has been said, that this Act of Assembly, 1825, ch. 135, *ante*, 215, *note*, by which the devisees of the late William Campbell have been authorized to mortgage his real estate, can, in no way, be allowed to alter or affect the rights of his creditors. For, mortgaging the assets is not the natural way of paying debts with them, although, in some cases, it may be the most expedient mode, as where a sufficient sum may be raised in that manner to satisfy all the creditors, without delay, and without prejudice to the heirs, devisees, legatees, or next of kin of the deceased. *Andrew* v. *Wrigley*, 4 *Bro. C. C.* 138. (*n*) This special Act may be admitted to be fully and in all respects obligatory upon those devisees who are parties to it, and at whose instance alone it was passed; but the creditors of the testator, being entire strangers to it, must be permitted to stand here as if it had never been passed, and to sustain their rights against these devisees in like
*manner as if they, the devisees themselves, being compe-
tent to contract, had, of themselves, mortgaged the estate **238**
devised to them.

The heir of a deceased debtor, at common law, was only bound for the payment of the bond debts of his ancestor, because of the express terms of the obligation, and in respect and to the extent only of real assets descended, which liability of the heir has been, in Maryland, extended by statute in favor of all simple contract creditors, in like manner as to bond creditors. 5 Geo. 2, c. 7. By the common law, if a debtor, instead of suffering his real estate to descend to his heir, devised it to any person, or if the heir aliened the land before an action was brought against him, the creditor was without remedy. But this injustice has been removed by a statute which declares, that all devises, as against creditors, shall be deemed fraudulent and void, and that the heir or devisee, after

(*n*) By the Act of 1831, ch. 311, s. 12, if constitutional, this Court has been clothed with power to mortgage the interest of infants in lands, where it shall appear to be for their advantage so to procure money, for the benefit of such estate of the infants; or to improve the same, or to relieve it from any incumbrance, or otherwise, for the benefit of such infants.—*Williams' Case*, *post*, 3 *vol.*