

however apply only to cases where an alienation has been made by an heir or devisee before the institution of a suit by a creditor for the purpose of subjecting the real estate of his debtor to the payment of his debts. But to prevent justice from being baffled, and a traffic in litigated titles, no alienation is allowed to be of any avail against the interests of the parties to a *lis pendens*. To constitute such a *lis pendens*, in this Court, it is sufficient that there be a bill filed and a subpoena returned served in a suit, the object of which is to affect the right to the estate. During the pendency of such suit, a defendant can, in no way, encumber or sell the estate to the prejudice of a plaintiff who may have a claim upon it, or of a party * who, as a creditor, may have a right to have **241** it sold as assets to be applied in satisfaction of the deceased's debts. *Co. Litt.* 102; *1 Pow. Mortg.* 547, note R.; *Sugd. Vend. & Pur.* 535; *Calvert Parties*, 101.

In this case, long after a suit had been instituted by these very devisees themselves, to have the real estate of this deceased debtor sold for the payment of his debts, they applied to the General Assembly and obtained this special Act, authorizing them to raise money for the payment of those debts by way of mortgage instead of a sale of the realty; which Act they did not ask this Court to carry into effect for their benefit, until after the creditors of their testator had been publicly notified to come in, and some of them had actually become parties by filing the vouchers of their claims. So far as this private Act lends its aid in removing any disabilities

Forest, liable to the payment and satisfaction of the sum of money aforesaid, and interest thereon, and costs hereby decreed to the complainant. And it is Ordered, that the said tract of land, called Vanbibber's Forest, is and shall be assets in the hands of the said Nathan Baker, devisee aforesaid, to satisfy the complainant the debt, interest and costs aforesaid.

And it is further Decreed, that the defendant Jeremiah Baker, hath in his hands a tract of land, called Clayfall, devised to him by the said Henry Baker, Senior, deceased; that the said tract of land, being at the time of the decease of the said Henry Baker, Senior, of the value of £900 current money, and at the same time under mortgage for a debt of £300 sterling, equal to £500 current money, and the same devisee having since redeemed the said mortgage, he, the said Jeremiah Baker, is answerable to the complainant for the sum of £400 current money, with interest thereon from the 7th day of May, 1785; it is therefore, Ordered, that the defendant Jeremiah Baker, pay to the complainant towards the satisfaction of his debt, interests thereon and costs aforesaid, the sum of £400 current money, with interest thereon, from the 7th day of May, 1785, aforesaid.

And the said defendant Henry Baker, brother and heir of Samuel Baker, who was devisee of Henry Baker, Senior, having stood out the process of this Court, it is Decreed, that the complainant may proceed to take out a commission to prove his allegations against the said defendant Henry Baker, subject to such future order and decree therein, as this Court shall make respecting the same; 1785, ch. 72, s. 19.—*Chancery Proceedings*, lib. S. H. H. lett. C, fol. 111, 136.