

where the creditor may recover by action of debt; the common law, in other respects, remains unaltered; so that no damages can be recovered of a devisee of the land, for a breach of covenant made by the devisor. *Wilson v. Knubley*, 7 East, 128. This English statute has been expressly recognized as one of the legislative enactments of our Code; 1797, ch. 113; and, consequently, where a creditor's suit is brought to charge any lands so devised, the heir as well as the devisee, must be made a party; because it is the statute alone which makes the land assets in the hands of the devisee; and that requiring the heir to be made a defendant at common law, the bill in this Court must follow the remedy therein prescribed. *Gawler v. Wade*, 1 P. Will. 99; *Galton v. Hancock*, 2 Atk. 432.(o) But if the bill alleges, that the testator left no heirs,

(o) *ORCHARD v. SMITH*.—This bill was filed on the 31st of August, 1788, by John Orchard, Robert Pearle, William Cumming, and Jonathan Davis, against John Smith and Mary his wife, and Peter Hoggins. The bill states, that Gunder Erickson, deceased, being, in his life-time, possessed of considerable real and personal estate, and being, at the same time, indebted to sundry persons, in order to pay his debts, in case his personal estate should fall short, on the 17th of March, 1728, by his last will devised as follows: "It is my will and desire, that a certain tract of land belonging to me, lying on Rock Creek, called Norway, containing six hundred and thirty acres; and another tract of land containing two hundred acres, called Garden's Delight; likewise two houses and lots in Nottingham, in Prince George's County; and my right to a house and lot in Queen Ann Town, all be sold in order to discharge the debts I owe;" and then appointed his wife, the defendant Mary, his sole executrix; that in a short time thereafter he died; that she, Mary, caused the will to be proved; but renounced the administration thereof; whereupon letters of administration, with the will annexed, were granted to the defendant Hoggins, who acted as such accordingly; that the deceased was indebted to the plaintiff Orchard, in the sum of £13 1s. 6d. current money; to the plaintiff Pearle, in the sums of 4,246 lbs. of tobacco, and £28 5s. 0d.; that they severally sued the administrator Hoggins, who pleaded that he had fully administered, whereupon they obtained judgments against him therefor, when assets should come to his hands; that the deceased was indebted to the plaintiff Cumming, in the sum of 2,638 lbs. tobacco; that the defendant Mary afterwards married the defendant Smith: who have hitherto refused to sell the said lands, unless they may be compelled and justified in doing so by a decree of this Court. Whereupon it was prayed, that the said lands, or so much thereof might be sold, as would be sufficient to pay the deceased debts and the costs and charges of the persons empowered to sell the same.

On motion of the defendant Hoggins, by his solicitor, it was Ordered, that the said name of Peter Hoggins be struck out of the said bill of complaint.

The defendants Smith and wife, by their answer, admitted that Gunder Erickson, deceased, did make his will, as in the bill mentioned, and that on the defendant Mary's renouncing the executorship, administration was granted to Peter Hoggins; that the said Erickson, by his will, devised to the defendant Mary, in fee simple, half of the tract of land on which he lived, in lieu of her dower, which she accepted as such; that after the marriage of these defendants, the plaintiff Cummings, and Robert Tyler, bond creditors of the deceased, sued these defendants, as devisees, and recovered judg-