

**320** \*law, 1797, ch. 113, the creditor may, on stating the fact, proceed against the devisee alone, with the executor or administrator of the deceased, if there be any such personal representative.

But the Statute of 1691 is confined to cases, where a debtor devises his real estate away from his creditors, and leaves them to chance to obtain satisfaction of their debts, enriching third persons at their expense. And therefore, the devising of an estate for the payment of debts takes the case out of the statute; and leaves the debt to stand as it would have done before, so that the creditor can come upon the real estate only in such manner as the will directs. The mere inconvenience of the mode prescribed by the testator for the payment of his debts will not bring the devise within the statute; provided the fund be ultimately sufficient; and the gift of the estate for the payment of debts has been made in an effectual and practicable manner, so as to answer the purposes. *Hughes v. Dublin*, 2 Cox, 170; S. C. 2 Bro. C. C. 614; *Pow. Mortg.* 69, 325. In all such cases the real estate thus made liable is held to have been thereby converted from legal, into equitable assets; because of its being so made assets in equity where they would not be so at law; and also, because of there being no mode of administering such assets but in a Court of Chancery; 2 *Fonb.* 403; where, upon principles of equity, it is held, that specialty creditors can only be allowed to come in, *pari passu*, with simple contract creditors; and moreover, that notwithstanding the infancy of the heir or devisees, the lands may, without allowing the parol to demur, be immediately sold for the benefit of all the creditors. *Newton v. Bennet*, 1 Bro. C. C. 136; *Lingard v. Derby*, 1 Bro. C. C. 311; *Powell v. Robins*, 7 Ves. 209; *Bailey v. Elkins*, 7 Ves. 322; *Shiphard v. Lutwidge*, 8 Ves. 826; *Leigh and Dal. Equ. Conver.* 10, 13. This construction and qualification of this English statute has been virtually affirmed by the Act of Assembly which authorizes the Chancellor, where lands are devised to be sold for the payment of debts or other purposes, and there is no

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lands and premises to the purchaser or purchasers thereof as to the said master shall seem proper; so that the same shall not contain any clause or warranty to affect, bind or charge the said defendant Mary Smith, or any estate belonging to her, in her own right; and that the said Mary Smith be indemnified therein by virtue of this decree; and that all parties, as well as any creditors, have leave to apply, from time to time, to this Court for further directions in the execution of this decree.

After which, the case having been again brought before the Court,

OGLE, C., February, 1740.—Upon motion, it is Ordered, that the creditors of Gunder Erickson have further time till the 26th of March next to prove their respective debts before the master.—*Chancery Proceedings*, lib. J. R. No. 4, fol. 89 to 94, and 163.