any means become insufficient for the payment of the debts of the deceased, and that he left real estate, then all the heirs and
348 *devisees must be made parties to enable the creditors to obtain satisfaction out of such real assets. *Knight* v. *Knight*, 3 *P. Will.* 331; *Kenyon* v. *Worthington*, 2 *Dick.* 668; *Galton* v. *Hancock*, 2 *Atk.* 435; *Ashurst* v. *Eyre*, 3 *Atk.* 341; *Madox* v. *Jackson*, 3 *Atk.* 406; *Fordham* v. *Rolfe*, 5 *Cond. Cha. Rep.* 257; *Tyler* v. *Bowie*, 4 *H. & J.* 333; *David* v. *Grahame*, 2 *H. & G.* 97. Owing, however, to our law of partible inheritances, much inconvenience arises, in some cases, from the rule, that all the heirs and devisees must be made parties, which the Legislature has endeavored to remove by requiring the heir, at common law only, to be summoned, and allowing an order of publication against the rest. 1797, ch. 114; 1831, ch. 311, s. 10 and 11; *Kilty* v. *Brown*, *ante*, 222. But although it is, in general, necessary to have the executor or administrator before the Court; either as a plaintiff, asking direction and indemnity, or as a suing creditor, *Wankford* v. *Wankford*, 1 *Salk.* 304; or as a defendant, to have an account of the personal estate, that it may be first applied as far as it will go; yet if the debtor left no personal estate whatever, and that fact plainly appears in the case; or the personal estate left by him, was of so little value, that no one had taken out letters of administration, *Walley* v. *Walley*, 1 *Vern.* 487; *Cowslad* v. *Cely*, *Prec. Cha.* 83; *D'Aranda* v. *Whittingham*, *Mosely*, 85; *Heath* v. *Percival*, 1 *P. Will.* 684; *Ashurst* v. *Eyre*, 2 *Atk.* 51; *Madox* v. *Jackson*, 3 *Atk.* 406; *Will. Ex'rs*, 227, which fact of there having been no letters of administration may be sufficiently shewn by a certificate of the register of wills of the county in which the debtor died, *Deshon* v. *Buchanan*, 1 *February*, 1819; or if the executor of the deceased debtor be dead and insolvent, a creditor's suit may be sustained against the heirs and devisees of the deceased debtor alone, without making his personal representatives defendants. *Gregory* v. *Forrester*, 1 *McCord*, 326; *Riddle* v. *Mandeville*, 5 *Cran.* 330.

If the deceased debtor, at the time of his death, was a partner with others, then, upon the allegation of that fact, and because of his assets having been so, during his life-time, mixed up with the property of others, his surviving partners, upon whom the whole had devolved, must be also made parties, in order that the plain-

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(*u*) Although by the law of some other countries, the lands as well as every other kind of property of the debtor are, as at this time in Maryland, alike liable for the payment of his debts, whether due by simple contract or otherwise; yet everywhere the personal or movable estate of the debtor seems to have been considered as the primary fund, which was to be first applied in payment of debts, so far as it would go, in aid of the land or real estate of the debtor; *Bowaman* v. *Reeve*, Prec. Cha. 577; *Anonymous*, 9 Mod. 66; *Vattel. b.* 1, *c.* 7; *Code Napol. by Barret*, *Introd.* 328; 7 *Petersdorff*, *Abr.* 527, *note.*