v. *Kelsall*, 8 *Cond. Cha. Rep.* 61; *Powys* v. *Mansfield*, 9 *Cond. Cha. Rep.* 445; 1785, ch. 72, s. 5. In case the creditor establishes the claim, and the heir or devisee does not allege and shew a sufficiency of personal estate to pay the debts, this law leaves to the Court no discretion whatever; it must decree a sale of so much of the realty as may be sufficient to satisfy the debt for which it has been thus shewn to be liable. This law not only leaves to the Court no discretionary power to refuse to sell; but it is strongly indicated, by its terms, that the debt is to be satisfied out of such real assets, without any condition or reservation whatever, according to the full extent of the legal liability of the deceased debtor; that the contract of the creditor is to be, in no respect, embarrassed or impaired, and that he is, without delay, to obtain satisfaction from the real assets of the deceased, in as complete and ample a manner as he could have had against the debtor himself, were he then alive.

I am therefore satisfied, that this first position, as to the discretionary power of the Court, upon which these principles in relation to the distribution of the real assets of a deceased debtor have been rested, must altogether fail.

Another position taken in support of these principles, is, upon the general rule in equity, that where a debt is joint and several, the creditor should bring each of the debtors before the Court. The reasons for which general rule are, that such debtors are entitled to the assistance of each other in taking the account; that it is necessary to prevent circuity of action; because the Court may decree over as between the defendants according as they may be entitled to contribution in paying the debt; or where one may have paid more than his share; and that if they are different funds, as where the real and personal assets are in the hands of the heir, and executor, who are to that extent both liable, the creditor must make both of them parties, as the personalty must be first applied to the satisfaction of his claim, and the realty only in aid of, and so far as may be necessary to make up the insufficiency of the personal estate. The exceptions to this rule are, first, where those of the obligors who have not been made parties are only sureties; secondly, where it plainly appears and is admitted, that nothing has been paid, and that the co-obligor is insolvent; **523** thirdly, where it clearly appears and is admitted, that there are no personal assets, the personal representative need not be made a party; and lastly, where the creditor had obtained judgment at law against the one of the several obligors who is the defendant in equity, it is not necessary to bring the other obligors before the Court, because the bond is drowned in the judgment. *Jackson* v. *Rawlings*, 2 *Vern.* 195; *Galton* v. *Hancock*, 2 *Atk.* 436; *Madox* v. *Jackson*, 3 *Atk.* 406; *Angerstein* v. *Clark*, 2 *Dick.* 738; *Cockburn* v. *Thompson*, 16 *Ves.* 326; *Morrice* v. *The Bank, Ca. Tem. Tal.* 222;