altered about forty years ago, and since that time the proceeds of the sale of the real estate have been always ordered to be brought in; and the creditors called before the Court, that the rights of each and the conflicting interests of all might be adjusted by the Court itself, and a distribution made among them accordingly.

Hence, it appears from a review of the course of proceeding in this Court on creditor's bills, under all the mutations and improvements it has undergone, and from the legislative enactments in relation to the subject, to have always been a settled general principle, that the real assets were to be administered by the heir, or by this Court, in like manner as an executor was required to administer the personal assets. But there is no instance, where, in a suit against an executor, either at law or in equity, the suing creditor has been told, that before he could be allowed to obtain a judgment or decree for satisfaction, he must shew that the late *obligor was the principal debtor; or if a surety, that his principal or co-surety, was insolvent; and yet, if the principles of this Court be correct, they should certainly be as fully applicable in a suit at law or in equity against a personal representative, as in a suit against the heir or holder of the realty. Consequently, it is evident, that these principles of this Court, are incompatible with the spirit, if not the very letter of our legislative enactments, and with the general tenor of those rules, according to which the assets of a deceased debtor are administered in every other Court. **527**

A third ground assumed in those decisions of my predecessors, is, that where the debt appears to have been contracted by the deceased, jointly with another who is solvent, the Court should refuse to suffer the creditor to have an infant's estate sold; because such a creditor has or had it in his power, since the ancestor's or devisor's death, to recover the whole claim from the other debtor.

In considering this position, it will be necessary to recollect, that it was originally and has always been applied to cases of mere personal transitory contracts, by which two or more are bound by the terms of the contract for the payment of money. It has not been exclusively applied to those cases where the creditor had received from his debtor a pledge or pawn of property, which he stipulated to have appropriated to the satisfaction of his claim in the first instance, before he made any personal demand upon his debtor; nor has it been confined to those cases in which the creditor had accepted from his debtor an assignment of a bond, note,

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charge of the just claims of the creditors of the said Ambrose Cooke, in due course of administration, after deducting thence all the legal costs of this suit, and his just expenses, and commission of five per cent. allowed hereby to himself, &c.—*Chancery Proceedings, lib. S. H. H. lett. B. fol.* 744.