respective distributive shares, they have, by this their own deed, completely bound up and mortgaged the whole of their interest, whatever it may be, to its utmost extent. *M'Leod* v. *Drummond*, 17 *Ves.* 170.

Richard H. Clagett by his answer relies upon the fact of his having been an infant at the time he signed the mortgage, as an ample defence for himself. The fact of his infancy is fully established by the proofs. He, however, asks for himself no more than to be discharged from the obligatory force of the deed; and to have it treated as a nullity so far as it is made the foundation of any claim against him. But he makes no claim of his distributive share of the intestate's estate in any form. He does not allege, that he has not been satisfied by this administratrix to the full amount of his distributive portion. So far from making any such assertion of his own individual rights in opposition to this deed, he plants his defence against it, apart from the allegation of his infancy, in all respects, upon the same ground taken by all the other defendants. And consequently, although he cannot, because of his infancy, be bound by the mortgage as his deed; yet having, by his answer, failed to assert his right, when thus implicated and called on to do so, he must be considered as having waived all objection to this mortgage on the ground of its having made any improper disposition of his interests inconsistent with the office and duty of the administratrix. *Stackhouse* v. *Barnston*, 10 *Ves.* 466. Hence, as Richard H. Clagett, for this reason, can, on the one hand, claim no protection of his interests in this suit; so, on the other; because of his infancy, there can be no decree against him. I shall therefore dismiss the bill as to him.

It has been urged, however, that although this administratrix might have had sufficient power so to dispose of the assets; or that the questionable disposition thus made of them, had been fully affirmed by the distributees; yet that the instrument by which it was proposed to be effected, not having been recorded, is, in that respect, deficient in one of the solemnities necessary to constitute a valid mortgage.

By the common law, to make a valid deed certain forms and ceremonies are indispensably necessary, in that way, to manifest the *deliberate will of the contracting parties; and it is admitted that this mortgage has all the common law requisites of a **172** binding deed. But the legislative enactments here, which require deeds to be recorded, like those of England requiring enrollment, are universally admitted to have been intended to preserve the evidence of the contract; and to prevent the practice of fraud upon creditors and purchasers. The object was to furnish the means of notice and a protection to innocent third persons, not parties to the contract. It never has been held, that those laws altered any principle of the common law, or required any thing, in