197 * devisee from whom the body of the realty was taken. *Culpepper* v. *Aston*, 2 *Chan. Cas.* 115; *Oxenden* v. *Compton*, 2 *Ves. Jun.* 73; *Maugham* v. *Mason*, 1 *Ves. & Bea.* 415; *Jones* v. *Jones*, 1 *Bland*, 452. And upon like ground of necessity to satisfy the just claims of others, in partition cases, where it is impracticable to make any just partition of the real estate, or where a partition cannot be made of it without much disadvantage, there, as well by the long established power of the Court, as by positive legislative enactment, real estate in which an infant has an interest in common with others may be sold, and a share of the proceeds of the sale, consisting of personalty, may be awarded to the infant. 1785, ch. 72, s. 12; 1820, ch. 191; *Corse* v. *Polk*, 1 *Bland*, 233, *note*.

The Courts of justice of England, acting in accordance with these general principles and holding the rights of property, particularly those of an infant, to be in all respects sacred and inviolable, but upon the ground of some great and overruling necessity, have cautiously abstained from meddling with all such rights in any way. And therefore it is, that the English Court of Chancery has never, except in the cases above mentioned, undertaken to dispose of an infant's land, or inheritance in real estate; and that, although many cases have arisen, in which the income of an infant's estate has been found to be entirely insufficient for his support; yet it has rarely occurred, that the Court has broken in upon the capital of even his personal estate for the mere purpose of maintenance, though it has frequently done so for his education and putting him out in life. *Barlow* v. *Grant*, 1 *Vern.* 255; *Franklin* v. *Green*, 2 *Vern.* 137; *Harvey* v. *Harvey*, 2 *P. Will.* 21; *Davies* v. *Austen*, 1 *Ves. Jun.* 248; *S. C.* 3 *Bro. C. C.* 178; *Lee* v. *Brown*, 4 *Ves.* 362; *Walker* v. *Wetherell*, 6 *Ves.* 474; *Beasley* v. *Magrath*, 2

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against whom the bill shall be filed does not pay the sum due, by the time limited in the decree, the mortgaged premises, or so much thereof as may be necessary to discharge the money due and costs, may be sold for ready money, unless the plaintiff shall consent to a sale on credit; and the money raised by such sale shall be ordered to be brought into Court to be paid to the plaintiff.—(1785, ch. 72, s. 3; *David* v. *Grahame*, 2 H. & G. 94.)

It appears to have long been the understanding of the profession and of this Court, as indicated in the above case of *Jones* v. *Betsworth*, and in other cases, that the proceeds of the sale of the mortgaged property should be first applied to the payment of the costs, commissions and expenses, and the balance only to the satisfaction of the mortgage debt; or discounted from the debt, should the mortgagee himself be the purchaser, leaving the mortgagee to proceed otherwise against the mortgagor for the recovery of so much of the debt as was thus left unsatisfied.—(*Ridgely* v. *Belt*, 1805; *Murdock's Case*, 2 Bland, 464, 468.)—But in England it is otherwise; there, according to a recent decision, the whole amount of the proceeds of the sale must be first applied to the satisfaction of the mortgage debt.—(*Upperton* v. *Harrison*, 10 Cond. Chan. Rep. 139; *Ellison* v. *Wright*, 3 Cond. Chan. Rep. 482.)