

Court of equity to set aside conveyances or other obstructions fraudulently thrown in the way by a debtor, not being regarded as an exception to the general rule. The death of a debtor is never allowed to impair the obligation of his contract as respects his estate, or in any way to alter, or lessen the liability of his property. *Owen v. Davies*, 1 *Ves.* 82.

In a creditor's suit, instituted for the purpose of having a deceased debtor's whole estate administered in equity, the requiring all his representatives, his executor, or administrator with his heirs or devisees to be brought before the Court, has never been deemed necessary upon any ground affecting the title of the creditor; or upon any principle having any injurious bearing whatever upon the creditor's rights. During the life-time of a debtor, his creditor, who has obtained judgment against him, cannot be hindered or delayed in the recovery of his debt by being obliged to take first one species of property, and then another, in execution, in order to obtain satisfaction; since there is no one kind of a \*debtor's property which is privileged from being taken **38** in execution until another has been exhausted. It is clearly not necessary, in any case, during the life of a debtor to exhaust his personal estate as a means of coming at his realty. *Hanson v. Barnes*, 3 *G. & J.* 359.

But if the objection now taken be well founded, then it necessarily follows, that the death of a debtor materially curtails the rights of his creditors; since on that event a creditor's title to relief must depend, not merely upon the fact of his debtor having left property enough to pay all his debts; but upon the fact of its being alleged and shewn, that his personal estate is insufficient for that purpose; and also upon its being alleged and shewn that he, the plaintiff, had, with all due diligence, endeavored to obtain satisfaction from the personal estate of the deceased; in order thereby to lay a foundation whereon to proceed against the realty.

Hence it follows, if this proposition be correct, that the rights of a creditor are materially affected by the death of the debtor. If the law be so, as between creditor and debtor, then it is certainly true, according to the general rule, that a plaintiff must set forth every fact which constitutes any material portion of the title upon which he asks relief, that he should, in a creditor's suit, expressly allege and shew, that the personal estate of his deceased debtor was insufficient to pay his debts; and that he had used all due diligence in endeavoring to obtain payment from his personal estate to enable him to obtain a sale of his real estate for that purpose.

The matter here presented is one of much importance; since it is not confined to a mere form of practice; but involves the rights of creditors generally; and therefore requires to be fully investigated and carefully considered.