2 *Inst.* 394; 3 *Blac. Com.* 418, 420; *Kilty Rep.* 143, 144, 151; 1715, ch. 23, s. 6. In all cases, where, according to those English statutes, lands might be taken in execution and extended, the judgment gave to the plaintiff a general lien upon such lands as the defendant then held, or at any time * afterwards ac- **40**
quired while the judgment remained in force. 2 *Inst.* 469; *Jefferson* v. *Morton*, 2 *Saund.* 6; *Uderkill* v. *Devereux*, 2 *Saund.* 60, 71; *Harris* v. *Saunders*, 10 *Com. Law Rep.* 373. And consequently, if the defendant died after judgment, and before execution or satisfaction, the plaintiff might, as it would seem in England, and certainly here, without first proceeding against the executor or administrator to obtain satisfaction of his judgment, at once sue out a *scire facias* against the heirs and terre-tenants of the land descended; and, upon no good cause being shewn, have execution against the lands; and thus enforce payment from the real assets, although there might be more than a sufficiency of personal estate of the deceased to discharge all his debts. *Bricknold* v. *Owen*, *Dyer*, 208, *pl.* 15; *Stileman* v. *Ashdown*, *Amb.* 16; *Panton* v. *Hall*, *Carth.* 106; 2 *Harr. Ent.* 444, 749, 763, 767, 755.

But as those English statutes, which gave the right to have the lands extended for the satisfaction of debts, comprehended all the lands of the debtor, it therefore followed, that if, on his death after judgment, his lands passed into the hands of several, who, because of their being alike liable, were entitled to contribution from each other, they should be all summoned by *scire facias;* and if any one of the several heirs should be within age, the parol should demur as to all. *Co. Litt.* 290; *Bac. Abr. tit. Execution*, *B*, 2, 4; *Sir William Harbert's Case*, 3 *Co.* 13. This right to contribution is an equity arising between those who are alike liable, because of the real assets in their hands. It is therefore only necessary, that the creditor should merely have them summoned, to enable each defendant to obtain justice for himself as against the others, without prejudice to the claim of the creditor; since it rests with the defendants alone to insist upon and have the contribution adjusted among themselves; for, if they, or any of them, on being summoned, fail to plead, that they are not liable, or that there are others who are liable, and who have not been warned; or to shew the extent of the contribution, the plaintiff shall have his judgment against those only who have been warned, which will be conclusive against them. *Bac. Abr. tit. Scire Facias*, *C*, 5; *Michel* v. *Croft*, *Cro. Jac.* 506; *Jefferson* v. *Morton*, 2 *Saund.* 8, *note*, 10; *Averall* v. *Wade*, 10 *Cond. Chan. Rep.* 498.

But by the common law, where a debtor, by a writing under his hand and seal, binds himself and his heirs for the payment of a debt and dies, leaving real estate to descend to his heir, such heir is bound, in respect of such real assets descended, for the payment of the debt. And such bond creditor may, at his election, sue the