

should appear and defend. Upon which the Chancellor being fully satisfied of the truth of such facts might order a sale of the real estate, &c.; which if not sufficient to pay all the debts, the money arising from the sale should be equally distributed among all the creditors in proportion to their debts without any preference; and upon any certificate of survey being made and returned in consequence of an escheat warrant, any creditor of the deceased might enter a caveat to the same, &c. 1785, ch. 78, s. 1. After the passing of some private Acts to remove difficulties in cases of this kind; 1789, ch. 33; 1792, ch. 44; it was, by another general Act declared, that in case any person seised or possessed of land, or having an equitable interest therein should die without leaving any known heir or devisee, and without leaving a sufficient personal estate for the payment of his debts contracted within this State, or with any of the citizens thereof, the Chancellor upon the application of any such creditor might order the real estate to be sold, &c. 1794, ch. 60, s. 3, 6.

These legislative enactments, on a careful consideration of them, it will be perceived, do, in effect, declare, that a creditor may, where there are no heirs or devisees, proceed against the State itself to obtain satisfaction from the realty of his deceased debtor in the hands of the State. And this privilege has been granted to creditors by the first of these laws, so far as it may not have been virtually repealed by the last of them, upon the terms, if there should not be enough to pay all, that the proceeds of sale should be distributed in due proportion, without any preference; and that none *but such creditors as are citizens of this State; *Corrie's Case*, 2 *Bland*, 495; should be allowed to **54** come in and have the real estate sold for the payment of their debts in the manner prescribed. These legislative provisions it is obvious have relation to peculiar cases, to which the State is a party, and do not in any way affect the rights of a creditor against the heirs or devisees, executors or administrators of his deceased debtor.

From this review of the law in relation to the matter now under consideration, it is therefore perfectly clear, even admitting that the defendants have relied upon the fact, that the plaintiffs had failed to allege and prove, that the personal estate of William Wyse deceased, was insufficient to pay his debts, it can be of no avail to them as a defence against the claim of these plaintiffs to obtain satisfaction by a sale of the real estate of the deceased in their hands; since, if it be true, that there is a sufficiency of personal estate to pay the debts of the deceased, it rests with these heirs alone to allege and shew that fact, and how that estate may be now so applied for the saving of their own interests. But as these heirs have failed to do so, the real estate in their hands must certainly be held liable, at least so far as the personal estate may be