son is held liable, because of his collusion with the administrator in misapplying the assets. *Elmslie* v. *M'Aulay*, 3 *Bro. C. C.* 624; *Doran* v. *Simpson*, 4 *Ves.* 651; *Alsager* v. *Rowley*, 6 *Ves.* 749; *Benfield* v. *Solomons*, 9 *Ves.* 86.

It is here stated and admitted, that the administratrix Rachel Wyse had in her hands all the personal estate of the debtor William Wyse deceased; and that she died without having accounted for what she admitted she had in her hands on the 29th of June, 1816. * Her personal representative has not been made a party to this suit, nor has it been in any way stated, or shewn, whether she died intestate or not; whether or not administration of her estate has been granted to any one; or whether she left any personal estate to be administered or not. Yet according to the general rule, that an executor or administrator of a deceased executor or administrator of the deceased debtor, who, at the time of his death, had assets in his hands, must be made a party to enable the Court to obtain a complete account of the whole personal estate of the deceased debtor, so as to do justice to all by having the personal estate applied in the first place in discharge of the inheritance; *Williams* v. *Williams*, 9 *Mod.* 299; *Holland* v. *Prior*, 7 *Cond. Cha. Rep.* 22; it is clear, that the executor or administrator of Rachel Wyse should have been brought here as a party, if it does not appear upon the face of these proceedings, why such a party has not been, could not be, or need not be called before the Court. *Hammond* v. *Hammond*, 2 *Bland*, 307.

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We have seen that in the case of the death of a debtor, after judgment, the *scire facias* against the heirs and terre-tenants must warn them all to appear; and that in equity the personal representative must be made a party with the heirs. But the reason why all the terre-tenants in the one case, and the executor or administrator in the other, must be brought before the Court, is, as has been shewn, not to enable the creditor to recover; but that the defendants may be enabled to obtain the contribution from each to which they are respectively entitled, or that the personalty may be first applied in aid of the realty, so that the burthen may be at once placed where it ought to rest, and no unnecessary injury done to any one.

This considered as a right, existing only among such defendants is one which a terre-tenant may decline to take advantage of; *Jefferson* v. *Morton*, 2 *Saund.* 9, *note*, 10; or an heir may even verbally disclaim. *Clinton* v. *Hooper*, 3 *Bro. C. C.* 214; *S. C.* 1 *Ves. Jun.* 188. But where the reason ceases the law ceases; and therefore, it has been held, in a suit of this kind, that when two persons are entitled, one to the personal estate, and the other to the real, as the Court cannot do justice to him who has the real estate, without taking an account of the personal in the first place, in relief of the real estate, both of them must be made parties; but