

taken, they had no notice of the advancement, and consequently that the advancement should not be brought into hotchpot, so as to diminish her share of the proceeds of the real estate now to be distributed, as thereby the fund to protect her surety from loss would be diminished.

The answer to this is that the right which the heirs have, that the estate advanced should be brought into hotchpot, is a legal right, and that no alienations or incumbrances placed by the heir advanced upon the property, given by way of advancement, can defeat that right. If it were otherwise, it would at all times be in the power of the heir receiving the advancement to escape the application of the law upon the subject, by disposing of or incumbering the estate given him by his ancestor.

These parties further insist, that forasmuch as the personal estate is insolvent, and the fund now for distribution results from the sales of real estate, they are under no obligation to answer that portion of the petition which refers to donations of personal estate, the ground assumed being that real estate is to be brought into hotchpot only with real estate, and personal estate only with personal estate.

This position, however, seems to me in opposition to the opinion of the Court of Appeals in the case of the *State use of Wilson vs. Jameson*, 3 G. & J., 342, in which it is very distinctly intimated that a Court of Equity will not suffer itself to be baffled by any technical objection of this nature, but will take care, in cases like the present, that the rights of all parties in interest are adjusted "agreeably to the rules of equity, amongst the most just of which is equality." Indeed, from the language of the Court in the case referred to, it may be very fairly inferred, that in an action at law on an administration bond, to recover a distributive share of the personal estate, the defendant may avail himself to defeat the action of an advancement to the plaintiff of real estate, if he avers in his pleadings, and shows by the evidence that the property advanced was of equal or superior value to the plaintiff's share of the estate, though it was said that a Court of Equity would be the more appropriate tribunal for the settlement of such questions.