

CHARGES UPON LANDS DEVISED.—*Continued.*

5. That, though thus personally bound, the land devised was the primary fund for the payment of the charge, the personal responsibility being only a collateral security, and the charge upon the land being destroyed by the union of the title and charge in the sister, she cannot have recourse to the personal estate of the brother to recover this charge. *Mitchell vs. Mitchell*, 71.
 2. The son became liable only in respect to the land devised to him, and even his personal contract to pay the money would not, in case of this death, shift the primary liability from the real to the personal estate. *Ib.*
 3. Where land subject to a mortgage or charge, descends to or is purchased by a party, who dies, leaving the debt unpaid, the land is the primary fund for the payment of the debt, even though the purchaser covenanted to pay it, such covenant being regarded only as additional security. *Ib.*
 4. The primary responsibility of the personal estate in general cases results from the fact that the contract is primarily a personal contract, the personal estate receiving the benefit, and hence the land is bound only in aid of the personalty. *Ib.*
 5. The case of *Stevens vs. Gregg*, 10 *G. & J.*, 143, is not in conflict with this case; the controversy in that case was between pecuniary legatee and the devisee of the real estate, and the legacies were not charged upon the land. *Ib.*
 6. The personal estate is the natural and primary fund for the payment of debts and legacies, even where they are charged upon the land devised or descended, and the real estate is only an auxiliary fund after the personalty is exhausted. *Ib.*
 7. A testator devised two tracts of land to his son in fee, upon condition that he shall keep and maintain his mother during life: "and it is moreover my desire that my said son do and shall provide for my daughters, Elizabeth and Susan, good and sufficient boarding, and comfortable clothing, so long as they may remain single." HELD, That this was a charge upon the whole real estate devised to the son, and that the daughters of the testator are entitled to a reasonable annual allowance for their board and clothing, or a gross amount in commutation thereof, out of the proceeds of the sale of the land. *Hutchins vs. Hutchins*, 356.
 8. This annual allowance is not to be made out of the profits of the estate, in common with the devisee and his family, nor are the daughters to be limited to a proportion of the interest on the proceeds of the sale. *Ib.*
- See WILLS, &c.*, 1. TRUSTS, &c., 5.

CHOSES IN ACTION.

See HUSBAND & WIFE, 5, 6, 7. PART PERFORMANCE, 1, 9. JURISDICTION, 2.

CODICIL.

See WILLS, &c., 5 to 10.

COMMISSIONS.

See COMMISSIONS TO TRUSTEES. ATTORNEY, &c., 5.

COMMISSIONS TO TRUSTEES.

1. When trustees are compelled to bring suit for the purchase-money, it has been the constant practice of the Court to allow a commission of 5 per cent. to the attorney engaged by them, and when the trustee is himself