

trine, that when a man purchases or has devised to him land with an incumbrance on it, he becomes a debtor only with respect to the land, and if he promises to pay it, is a promisor only on account of the land, which continues to be the primary fund, is very strongly expressed in the case of *Cumberland vs. Codrington*, as already cited. He says, "the doctrine, in such cases, is as firmly rooted and tenaciously adhered to as that which subjects the personal estate primarily, and as the 'natural fund' to the payment of debts originally contracted by the party, and even though the debt should be contracted by mortgage without either bond or covenant." In a note to the case of *Butler vs. Butler*, 5 *Ves.*, 584, many of the cases upon this subject are collected, and the principle established by the case itself is expanded so as to embrace that now under consideration. The doctrine of *Butler and Butler* is that upon the purchase of an equity of redemption, the agreement of the purchaser with the vendor to pay the mortgage, without any communication with the mortgagee, is not sufficient to make it the personal debt of the purchaser; and the cases cited in the note show that though the purchaser may have rendered himself liable at law to the mortgagee or creditor, that will not be sufficient, in the case of the death of the purchaser, to shift the primary liability from the real to the personal estate.

This question came before the Supreme Court of the United States in the case of *M'Lean vs. M'Lellan*, 10 *Peters' S. C. Rep.*, 625, and after an examination of the cases, it was declared to be the well-established rule upon the subject that the burden of the debt was never transferred from the real to the personal estate, except when the contract is personal and the mortgage is given in aid of the personal contract. But that where the land descends upon or is purchased by a party, subject to a mortgage, and the purchaser dies, leaving the debt unpaid, it will be charged upon the land mortgaged as the primary fund, and the principle is not changed, though the purchaser covenants to pay the debt; the covenant, under such circumstances, being regarded as additional security. The views expressed by the Supreme Court, in the case re-