ferred to at pages 643 and 644, unequivocally maintain the doctrine, and it will be found fully sanctioned by Mr. Justice Story in his *Commentaries on Equity Jurisprudence*, vol. 1, sections 574, 575, and 576.

In vol. 2, of the same work, section 1248, where this subject is again discussed, the principle is reasserted that "where a person becomes entitled to an estate subject to a charge, and then covenants to pay it, the charge still remains primarily on the real estate; and the covenant is only a collateral security, because the debt is not the original debt of the covenantor."

If this be the principle, and the real estate, which has descended to the complainant, be the primary fund for the payment of this claim, the personal responsibility of James D. Mitchell, resulting from his acceptance of the devise to him, being only a collateral security, I cannot see how it is possible to maintain this bill. The primary responsibility of the land is destroyed by the union of the title and the charge in the same person, and this being so, how can the party, in whose favor the charge was created, and who now holds the primary fund, have recourse to the collateral security? It is clear that if the land was held by a third person the owner of the charge would be thrown upon it, if it be the primary fund, or if the personal estate of the security was made to pay it, the personal representative would be entitled to reimbursement out of the land; and it is not seen how the rights of the parties can be different, or the secondary personal responsibility of James D. Mitchell converted into a primary liability by the circumstance that the land and the charge are united in the same person.

For these reasons, and upon this single ground, and without expressing any opinion upon the other questions which have been so fully and learnedly discussed at the bar, I shall dismiss the bill.

ROBERT J. BRENT, for Complainant.
WILLIAM SCHLEY, for Defendants.

[No appeal was taken in this case.]