

dered as a part of the proceeds of the *real* assets taken from the heir; therefore, must be paid to him, not to the executor or administrator of his ancestor; and, consequently, can only be taken from him to satisfy other claimants, who may have an equity to be let in, after the distribution, by a special application, under the creditors' bill, or in the suit by the mortgagee, upon the ground of the insufficiency of the personal estate of the deceased.(y)

There are other modes of judicial proceeding by which real estate may be changed into personalty, or by which lands may be converted into money or *choses in action*. This often occurs under the acts of assembly directing the course of descents; according to which, where the lands of an intestate are incapable of being divided among his heirs without loss, they may, on application to the proper court of law, be ordered to be sold, and the proceeds of the sale, or the bonds of the purchaser, divided among the heirs. But, the exact point of time when the judicial proceeding, instituted for that purpose, had effected a change in the nature of the property, was considered as a most interesting question in its consequences to the relative rights of the parties. As to which it was held, after mature deliberation, that the mutation of the estate, from *real* to *personal*, may be determined to be complete when the commissioners' sale is ratified by the court, and the purchaser has complied with the terms of it, by paying the money, if the sale is for cash, or by giving bonds to the representatives, if the sale is on a credit.(z)

According to this rule, the mutation, from realty to personalty, can only be finally consummated by a series of separate and distinct acts: *first*, there must be a judgment or judicial authority given by the court to sell; *secondly*, the commissioners, or agents employed to make the sale, must have reported to the court, that they had, in pursuance of that authority, made a sale; *thirdly*, the court must have ratified the sale so made and reported; and *lastly*, the purchaser must have either paid the purchase money or have given his bonds to secure the payment of it to the party entitled. When all these acts have been done, the judicial function of the court, in relation to the subject, has finally terminated; and the fund which had been submitted to its operation has been, thereby,

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(y) Pow. Mort. by Coven. 983; Bromley v. Goodere, 1 Atk. 75; Flanagan v. Flanagan, cited 1 Bro. C. C. 500; Banks v. Scott, 5 Mad. 493; Mackubin v. Brown, ante 410; Wright v. Rose, 2 Sim. & Stu. 323; Fenwick v. Laughlin, post 474.

(z) The State v. Krebs, 6 H. & J. 36.