

mine, that a judgment should have one kind of operation at law, and another in equity; or to hold that a plaintiff might, when it suited his purpose, and in some courts, insist, that a judgment, which he, himself, had caused to be entered up, should be deemed conclusive evidence of a fact; and yet that he might be permitted, for other purposes and upon other occasions, to insist that it should not stand in the way so as to prevent him, for his own benefit, from proving the non-existence of the very fact, of which he himself had voluntarily received it as the most satisfactory and conclusive evidence. (g) Equity follows the law, and in no respect with more satisfaction than in avoiding anomalies and incongruities. And besides, if the petitioner *Gaither*, had intended to controvert the fact of the sufficiency of the personal assets, he should have filed his bill here for the recovery of his claim; but, by suing at law, he tacitly waived that right, as against the heirs, unless a deficiency should be relied on and sustained as a defence by the administrator; and he is now precluded from doing so, by the nature of the judgments he himself has voluntarily sued for and obtained.

The other petitioner *Warfield*, as the surety of the late *Nicholas Welch*, might have filed a bill here against his heirs, on the ground of the insufficiency of his personal estate, to charge the realty with an indemnity to himself, *Warfield*, before he had paid the debt; also in behalf of the other creditors of the late *Nicholas Welch*; but having failed to do so, and having submitted to an absolute judgment against himself, as administrator of his principal, he can now have no such claim to relief. (h)

Whereupon it is *Ordered*, that the said petition be and the same is hereby dismissed with costs.

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On the 6th of November, 1829, *William Gaither* and *Joshua Warfield*, for themselves and in behalf of the other creditors of the late *Nicholas Welch*, filed their petition in this case, in which they again stated the same facts which they had set forth in their former petition, and that those absolute judgments had been improvidently rendered, the personal estate of the deceased being then wholly insufficient to satisfy the claims against it; and that the petitioner *Welch* believed, that they would bind only a proportion

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(g) *Dorsey v. Hammond*, 1 Bland, 472.—(h) *Arthur v. The Attorney-General*, ante 245, note.