

had aliened the land before an action was brought, or of a devisee of his debtor at any time. (s) To prevent this wrong and injury to creditors, it was declared by an English statute, passed in the year 1691, that the heir should be liable to the value of the land descended to, and aliened by him; and that all devises should be void, as against creditors; who should have the same right to sustain an action of debt against such devisee, that they could have had against the heir. (t) But as the relief, given by this statute, is confined to those cases only where the creditor may recover by *action of debt*; the common law, in other respects, remains unaltered; so that no *damages* can be recovered of a devisee of the land, for a breach of *covenant* made by the devisor. (u) This English statute has been expressly recognized as one of the legislative enactments of our code; (w) and, consequently, where a creditor's suit is brought to charge any lands so devised, the heir as well as the devisee, must be made a party; because it is the statute alone which makes the land assets in the hands of the devisee; and that requiring the heir to be made a defendant at common law, the bill in this court must follow the remedy therein prescribed. (x) But if the bill alleges, that the testator left no heirs,

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(s) *Solley v. Gower*, 2 Vern. 61; *Plunket v. Penson*, 2 Atk. 291; *Ex parte, Moreton*, 5 Ves. 449; Bac. Abr. tit. Heir and Ancestor, F.—(t) 3 W. & M. c. 14.—(u) *Wilson v. Knubley*, 7 East. 128.—(w) 1797, ch. 113.—(x) *Gawler v. Wade*, 1 P. Will. 99; *Galton v. Hancock*, 2 Atk. 432.

ORCHARD v. SMITH.—This bill was filed on the 31st of August, 1738, by John Orchard, Robert Pearle, William Cumming, and Jonathan Davis, against John Smith and Mary his wife, and Peter Hoggins. The bill states, that Gunder Erickson, deceased, being, in his life-time, possessed of a considerable real and personal estate, and being, at the same time, indebted to sundry persons, in order to pay his debts, in case his personal estate should fall short, on the 17th of March, 1728, by his last will devised as follows: 'It is my will and desire, that a certain tract of land belonging to me, lying on Rock Creek, called Norway, containing six hundred and thirty acres; and another tract of land containing two hundred acres, called Garden's Delight; likewise two houses and lots in Nottingham, in Prince George's county; and my right to a house and lot in Queen Ann Town, all be sold in order to discharge the debts I owe;' and then appointed his wife, the defendant Mary, his sole executrix; that in a short time thereafter he died; that she, Mary, caused the will to be proved; but renounced the administration thereof; whereupon letters of administration, with the will annexed, were granted to the defendant Hoggins, who acted as such accordingly; that the deceased was indebted to the plaintiff Orchard, in the sum of £13 1s. 6d. current money; to the plaintiff Pearle, in the sums of 4,246 lbs. of tobacco, and £28 5s. 0d.; that they severally sued the administrator Hoggins, who pleaded that he had fully administered, whereupon they obtained judgments against him therefor, when assets should come to his hands; that the deceased was indebted to the plaintiff Cumming, in the sum of 2,638 lbs. tobacco; that