

law, (y) the creditor may, on stating the fact, proceed against the devisee alone, with the executor or administrator of the deceased, if there be any such personal representative.

But the statute of 1691 is confined to cases, where a debtor devises his real estate away from his creditors, and leaves them to chance to obtain satisfaction of their debts, enriching third persons at their expense. And therefore, the devising of an estate for the payment of debts takes the case out of the statute; and leaves the debt to stand as it would have done before, so that the creditor can come upon the real estate only in such manner as the will directs. The mere inconvenience of the mode prescribed by the testator for the payment of his debts will not bring the devise within the statute; provided the fund be ultimately sufficient; and the gift of the estate for the payment of debts has been made in an effectual and practicable manner, so as to answer the purpose. (z) In all such cases the real estate thus made liable, is held to have been thereby converted from *legal*, into *equitable* assets, because of its being so made assets in equity where they would not be so at law; and also, because of there being no mode of administering such assets but in a Court of Chancery; (a) where, upon principles of equity, it is held, that specialty creditors can only be allowed to

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the said 3,357 lbs. tobacco, and 9,602 lbs. of tobacco, and the costs of suit mentioned in the said answer of the defendants John Smith and his wife; and if any surplus shall, after such several payments, remain, the same shall be subject to the further directions of this court. And this court doth further *Decree*, that the said John Smith and his wife shall, upon oath, produce before, and leave with, the master, what title deeds they, or either of them, may have in their, or either of their possession relating to the said land and premises; and that the said Mary Smith, as executrix named in the will of the said Gunder Erickson shall execute, according to law, such deeds and conveyances of the lands and premises to the purchaser or purchasers thereof as to the said master shall seem proper; so that the same shall not contain any clause or warranty to affect, bind or charge the said defendant Mary Smith, or any estate belonging to her, in her own right; and that the said Mary Smith be indemnified therein by virtue of this decree; and that all parties, as well as any creditors, have leave to apply, from time to time, to this court for further directions in the execution of this decree.

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After which, the case having been again brought before the court,

February, 1740.—OGLE, *Chancellor*.—Upon motion, it is *Ordered*, that the creditors of Gunder Erickson have further time till the 26th of March next to prove their respective debts before the master.—*Chancery Proceedings*, lib. J. R. No. 4, fol. 89 to 94, and 163.

(y) 1797, ch. 113.—(z) *Hughes v. Doublin*, 2 Cox, 170; S. C. 2 Bro. C. C. 614; Pow. Mortg. 69, 325.—(a) 2 Fonb. 403.