

ple contract creditor to have the estate collusively seized and sold, in fraudulent exclusion of other creditors; or so as to operate injuriously upon the interests of others, and particularly upon the heir by compelling him to seek reimbursement from the personal estate, which was the primary fund for the payment of debts. And therefore, those principles of equity by which the rights of bond creditors had been so far modified and controlled as, in many cases, to do equal justice to all creditors; and so as, at once, to the full value of the personalty, to protect the realty in the hands of the heir, were so followed out, in the construction of this statute, as not to permit a simple contract creditor to maintain an action at common law, at all, against the heir merely in respect of the real assets descended; but to compel him to go immediately into a court of equity against the heir, together with the personal representative of his deceased debtor, so as to enable the heir to protect himself, without any circuitry of judicial proceeding; and to save the realty, by having the personal estate first applied to the satisfaction of the debts; and to do justice to all the creditors by allowing them to come in according to their respective priorities; or for their due proportions. The adoption of these principles, and the giving of this construction to this statute, necessarily threw the administration of all real assets into the Court of Chancery; and gave a new and very enlarged scope to a creditor's suit.

Such must have been the course of proceeding, in all cases, under this statute, after the death of a debtor, as well where his heir was of *full age*, as in those cases where he was a *minor*; (l) for, if it were not so, then a simple contract creditor, as he was not allowed to sue at law, could, before the year 1818, have had no recourse against the real assets in the hands of *adult* heirs in any way whatever; since prior to that time, the only act of assembly in relation to the matter, being merely intended to prevent delay in proceeding against *infants*, (m) this British statute which had made such real estate assets for the payment of debts, would have been, thus far, virtually nullified. (n) This matter has, how-

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(l) *Cox v. Callahan*, ante 51, note.—(m) 1785, ch. 72, s. 5.

(n) *TYSON v. HOLLINGSWORTH*.—This bill was filed, on the 25th of May, 1801, by Nathan Tyson and others, creditors of Thomas Parkin and Francis McKenna, partners trading under the firm of Parkin & McKenna, against Jesse Hollingsworth and Rachel his wife, Susannah Goodwin and James Carey. The bill states that the firm of Parkin & McKenna had contracted debts to a considerable amount with the plaintiffs, as appeared by the promissory notes of the firm therewith exhibited; that