

ever, been put to rest by a positive legislative enactment, which declares, that the previous laws in relation to the sale of real

Thomas Parkin, by his last will, devised all his estate, real and personal, to the defendant Rachel, his mother, and appointed her his executrix, and soon after died; that she was, at that time, above twenty-one years of age; and on her refusing to act as executrix, letters testamentary, with the will annexed, were granted to the defendant Susannah; that, afterwards, Francis McKenna made his last will, by which he appointed the defendant James Carey, his executor, and soon after died; upon which the defendant Carey, qualified as his executor. The bill further states, that Thomas Parkin and Francis McKenna, at the time of their death, were considerably indebted, as appeared by the accounts of the defendant James Carey, passed before the Orphans Court, and exhibited as a part of the bill; and that all their partnership effects and personal estate were insufficient to discharge their debts; and that the whole of their partnership effects, and their personal estate, had been exhausted in the payment of his debts; and that there remained then, due from the estate of Parkin & McKenna, to the plaintiffs, a considerable sum of money; that the testator Francis, left no real estate; that the testator Thomas, held, at the time of his death, ten shares of bank stock, which had passed into the hands of his administratrix, the defendant Susannah; that he had died unmarried, and without issue, seized of real estate; but left no brother or sister of the whole or half blood; nor any issue of a brother or sister; nor did he leave a father; and that his mother, who was his heir at law, claimed the real estate left by him, as his devisee; and had taken possession, and received the rents and profits thereof accordingly. Whereupon it was prayed the defendants Jesse and wife might account for the rents and profits of the real estate; that the defendants Susannah and James, might account for the personal estate of their respective testators, and that the real estate devised to Rachel might be ordered to be sold, &c.

The defendant Carey, by his answer, said that he had passed an account as executor, before the Orphans Court, and distributed a large amount in payment of debts due from the firm of Parkin & McKenna, leaving considerable sums still due, &c.

The defendants Hollingsworth and wife, and Susannah Goodwin, by their answer, objected to the accounts of the defendant James Carey, as passed by the Orphans Court, in many particulars; and averred that, if all the effects had been fully accounted for, and applied by him, there would have been assets sufficient to pay all; or, at least, leaving a small balance due; and they say they do not know, or admit, that the debts stated in the bill are due; and they put the plaintiffs upon the proof thereof. These defendants admit the other facts as set forth in the bill, &c.

A commission was issued to take testimony, and returned with sundry depositions, documents, and admissions of the parties; from all which, the indebtedness to the plaintiffs was established substantially as charged; but the insufficiency of the personal estates of the deceased debtors; or of the separate personal estate of Thomas Parkin, deceased, was in no other manner averred in the bill than as stated above, or shewn by the proofs, than by the accounts of the defendants Carey and Goodwin, which they had passed before the Orphans Court.

30th December, 1803.—HANSON, *Chancellor*.—This cause standing ready for hearing, and being appointed, with notice to all parties, to be heard this day; and the counsel for the defendants being absent; and the cause being thereupon submitted by the complainant's counsel, the bill, answers, exhibits, depositions, and all other proceedings were, by the Chancellor, read and considered.

Whether or not, in case of a deficiency of assets in the hands of the executor or administrator, this court can decree a sale of a real estate devolving on a person of