obligor was the principal debtor; or if a surety, that his principal or co-surety, was insolvent; and yet, if the principles of this court be correct, they should certainly be as fully applicable in a suit at law or in equity against a personal representative, as in a suit against the heir or holder of the realty. Consequently, it is evident, that these principles of this court, are incompatible with the spirit, if not the very letter of our legislative enactments, and with the general tenor of those rules, according to which the assets of a deceased debtor are administered in every other court.

A third ground assumed in those decisions of my predecessors, is, that where the debt appears to have been contracted by the deceased, jointly with another who is solvent, the court should refuse to suffer the creditor to have an infant's estate sold; because such a creditor has or had it in his power, since the ancestor's or devisor's death, to recover the whole claim from the other debtor.

In considering this position, it will be necessary to recollect, that it was originally and has always been applied to cases of mere personal transitory contracts, by which two or more are bound by the terms of the contract for the payment of money. It has not been exclusively applied to those cases where the creditor had received from his debtor a pledge or pawn of property, which he stipulated to have appropriated to the satisfaction of his claim in the first instance, before he made any personal demand upon his debtor; nor has it been confined to those cases in which the creditor had accepted from his debtor an assignment of a bond, note, or *chose in action*, as a conditional payment, where, by the terms of the contract, the creditor is bound to use due diligence, in order to make the means of satisfaction, so placed in his hands, available; or excuse himself by shewing, that the pawn has been found insufficient, or that the debtors bound by such assigned *chose in action*, are insolvent, and that he has actually returned, or is, and has always been able and ready to return the *chose in action* so assigned. It cannot be denied, that the principles of the court so far as they have a direct bearing upon such cases as these, are sustainable by the clearest reason and equity; and indeed, have been enforced in courts of common law as well as in this court. (*e*)

(*e*) Kearslake *v.* Morgan, 5 T. R. 513; Clark *v.* Young, 1 Cran. 181; Harris *v.* Johnston, 3 Cran. 311; Powel Mortg. 1033; Hoffman *v.* Johnson, 1 Bland, 103; Dorsey *v.* Campbell, 1 Bland, 356.