

a guardian for these minors, who are between the ages of eighteen and twenty-one years, in order to enable all parties to obtain the relief they seek, or which may be beneficial to them. (*h*)

Therefore it is *Ordered*, that *Sarah C. Waring* be, and she is hereby appointed guardian of the said infant defendants *Susan Waring* and *Grace Waring*, with full power and authority to defend and protect the rights and interests of the said infants; and to give any consent that may be deemed necessary and proper for their advantage, in all respects whatever.

Immediately after which, the adult defendants, and the actual guardian of all the infant defendants, appointed by this or by the Orphans Court, put in their answers, and consented that the real estate should be sold as prayed. Whereupon the case was submitted without argument.

27th September, 1830.—BLAND, Chancellor.—The general rule is, that the personal estate is the natural fund, and must be first applied to the payment of the debts of the deceased owner, unless he had in some legal and clear manner expressed an intention, that a different disposition should be made of his property. (*i*) But the legislature has authorized the Court of Chancery to depart from this rule, upon the application, and with the consent of those to whom the realty has descended; and to decree a sale of it, in order to save the personalty. (*j*) It is with a view to the exercise of this authority, that this bill has been addressed to this court. As regards the heirs, the next of kin, and the widow, who alone are parties to this suit, it may be viewed merely as a proceeding to have the assets marshalled for their benefit. But the object of having them so marshalled is, so to shift the pressure of the burthen of the debts of the deceased, as to save the personalty for the benefit of these next of kin, who are also the heirs of the deceased. As no one can institute a suit without having some interest in it; so, this is a kind of suit which can only be instituted by one, who as heir, devisee or purchaser, has an interest in the real estate proposed to be sold; and also, an interest in that personal estate which it is proposed to have so saved; or, in other words, a party to a suit of this kind, must have an interest in both the real and the personal estate.

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(*h*) *Corrie's Case*, ante 488.—(*i*) *Tait v. Northwick*, 4 Ves. 316; *Hancox v. Abbey*, 11 Ves. 186.—(*j*) 1818, ch. 193, s. 8; 1819, ch. 183.