

tors, claims a right to obtain satisfaction from the whole estate of his deceased debtor, leaving the burthen to be adjusted, as between the real and personal estate, as the law may allow, without prejudice to his or any other creditor's claims to relief.

The question then is, whether it is necessary in a creditor's suit, like this, that it should not only be shewn at the hearing, but distinctly stated and charged in the bill of complaint itself, that the personal estate was insufficient to pay all the debts of the deceased, and that the plaintiff had used all due diligence in endeavouring to obtain payment from the personalty, to enable him to obtain satisfaction by a sale of the real estate?

It is no less essentially necessary in a Court of Chancery, than in a court of common law, that a plaintiff should distinctly set forth every fact and circumstance which constitutes that title upon which he asks relief. The forms of proceeding in Chancery, are, in general, not so precise as at common law; but the several facts which constitute a plaintiff's title to relief are matters of substance which no court of justice can dispense with; they must, therefore, be clearly shewn according to the prescribed forms of the tribunal.

It has long been universally understood, that all the property of a debtor, real, as well as personal, without distinction or preference, was liable in one form or other to be taken in execution and sold for the payment of his debts. The necessity of applying to a court of equity to set aside conveyances or other obstructions fraudulently thrown in the way by a debtor, not being regarded as an exception to the general rule. The death of a debtor is never allowed to impair the obligation of his contract as respects his estate, or in any way to alter, or lessen the liability of his property. (c)

In a creditor's suit, instituted for the purpose of having a deceased debtor's whole estate administered in equity, the requiring all his representatives, his executor, or administrator with his heirs or devisees to be brought before the court, has never been deemed necessary upon any ground affecting the title of the creditor; or upon any principle having any injurious bearing whatever upon the creditor's rights. During the life-time of a debtor, his creditor, who has obtained judgment against him, cannot be hindered or delayed in the recovery of his debt, by being obliged to take first one species of property, and then another, in execution, in order to obtain satisfaction; since there is no one kind of a