

simple contract creditors, that it had before applied to cases arising on the claims of specialty creditors. And consequently, it never, in any case, threw upon a creditor the necessity and burthen of alleging and proving the insufficiency of the personal estate of the deceased, as forming an essential part of his title to obtain satisfaction by a sale of the realty; because that was a fact which, from the nature of things, unacquainted as he must be with his debtor's private affairs, it would, in most cases, be impracticable for him to shew; and was, therefore, a matter with which he had no concern. And as equity is bound to follow the law, the court could not upon any principle whatever throw upon the creditor any such burthen. The allegation of the sufficiency of the personal estate can only come from the heir, because it would be of no avail to any other party; and as the benefit which the heir was allowed to derive from it, was only as against the personal estate, the issue as to the truth of such allegation was therefore, one which could only, with propriety, be made up between the heir and the executor or administrator. The first clause of this act of Assembly, it is evident, merely refers, in general terms, to these principles of equity, without making the least change in any of them, or intimating, that a creditor, in suing by bill in Chancery, was to encounter any new obstacle in any form. So far, therefore, this act of Assembly recognizes and affirms the then existing law without making any alteration in it whatever.

In regard to persons *non compos mentis*, as spoken of in this act, it will be sufficient to observe, that although the Chancellor, in the exercise of his jurisdiction, in cases of lunacy, has no power to exempt either the person, or the estate of the lunatic from the claims of his creditors; yet, where circumstances permitted, it had always been deemed to be within the scope of his authority so to order the management, or sale of a lunatic's estate as to secure to him a maintenance from the proceeds of his property; and, for that purpose, to postpone the payment of his debts by an immediate sale or application of the capital of his estate as far as practicable. (†) It is to these dilatory proceedings of the court, for the benefit of persons *non compos mentis*, that this provision of this act relates. And as it merely authorizes a sale to be made in cases where, independently of this act, a sale might have been enforced under the statute of 1732, this act must be understood as only in-

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(†) Shelf. Luna. 356; *Ex parte Dikes*, 8 Ves. 79; *Ex parte Philips*, 19 Ves. 123.