tending to declare, that there shall be no postponement or delay, for the benefit of a person *non compos mentis*, to the prejudice of creditors. Considered in that way, and it can be considered in no other, it has certainly made no very material change in the law. (*j*)

This act declares, that on the justice of the claim of such creditor being fully established, if, upon consideration of all circumstances, it shall appear to be just, that such debt should be paid by a sale of the real estate, the court may order the whole or a part of it to be sold. A plaintiff must, in all cases, establish the justice of his claim; in all cases the order passed by the court must appear to it to be just; and in no case ought more of a debtor's property to be taken from him than is necessary to pay his debts. In these particulars, therefore, this act of Assembly is simply an affirmance of the previously settled law, and nothing more.

But we have seen, that, under the law before this act of Assembly was passed, if any one of the claimants of the real estate was an infant, the judicial proceedings were to be stayed, or the parol demurred, as against all until the minor attained his full age. This privilege of infancy had, in England, been considered as a pernicious and grievous hindrance to creditors; (*k*) and had become much more so here after the adoption of the statute of 1732, when it was so frequently relied on to break, for a time, the promise of ample justice held out by that statute. The act of Assembly which allowed of a sale of the real estate during the infancy of the heir, with the consent of his guardian, was a poor mitigation of the evil, as it still left the creditor at the mercy of his debtor. But this privilege of infancy, if it had been suffered to remain, at this day, after the introduction of partible inheritances, by the act to direct descents, would have been still more grievous, or altogether insufferable, as it might have been interposed as a suspension of the relief prayed by a creditor, in so many cases, and for such a length of time, in the great majority of them, as to have amounted to an almost total repeal, as to the heirs of deceased debtors, of the statute of 1732, by which lands were made liable to be sold for the payment of debts. But this act of Assembly has authorized the appointment of a guardian to answer and defend for the infant heirs, so as to enable the creditor, at once, to substantiate his case, and establish his claim; and thereupon to obtain a decree for a sale

(*j*) Williams v. Whinyates, 2 Bro. C. C. 399.—(*k*) 3 Blac. Com. 430; Plasket v. Beeby, 4 East. 485.