

a collateral security, and the charge upon the land being destroyed by the union of the title and charge in the sister, she cannot have recourse to the personal estate of the brother to recover this charge.

The son became liable only in respect to the land devised to him, and even his personal contract to pay the money would not, in case of his death, shift the primary liability from the real to the personal estate.

Where land, subject to a mortgage or charge, descends to, or is purchased by a party, who dies, leaving the debt unpaid, the land is the primary fund for the payment of the debt, even though the purchaser covenanted to pay it, such covenant being regarded only as additional security.

The primary responsibility of the personal estate in general cases results from the fact that the contract is primarily a personal contract, the personal estate receiving the benefit, and hence the land is bound only in aid of the personalty.

The case of *Stevens vs. Gregg*, 10 G. & J., 143, is not in conflict with this case; the controversy in that case was between pecuniary legatees and the devisee of the real estate, and the legacies were not charged upon the land.

The personal estate is the natural and primary fund for the payment of debts and legacies, even where they are charged upon the land devised or descended, and the real estate is only an auxiliary fund after the personalty is exhausted.

[The bill in this case was filed on the 21st of April, 1846, by Sarah E. Mitchell, who claimed to be a creditor of the estate of James D. Mitchell, deceased, by reason of the devise contained in the will of Francis J. Mitchell, quoted in the opinion of the Chancellor, and of the facts charged in the bill, all of which are fully stated in said opinion. The bill asks that the said claim of the complainant be paid out of the personal estate of the said James D. Mitchell. It also charges that the complainant is one of the distributees of said estate, calls upon the defendant to account in this Court for his administration thereof, proceeds to surcharge and falsify his administration accounts filed in the Orphans' Court in various particulars which are specified, and prays that he may be required to file and produce with his answer each and every voucher referred to in his said accounts. It avers that he had omitted to charge himself with the full hires and services of the negroes held and possessed by him as administrator *d. b. n.*, and with the full profits of certain leasehold property in the city of Baltimore, and prays discovery of the full and true