

fund for the payment of debts; but there is no expression in it which can be so construed as to lessen or impair the previously existing legal rights of creditors; or which intimates an intention to prevent a specialty creditor from suing and enforcing payment at common law from the heir alone, in respect of real assets descended to him; or which would prevent a simple contract creditor, under a creditor's bill in Chancery, from obtaining relief upon the same principles, and to the same extent as a bond creditor from the heirs or devisees of the deceased in respect of the real assets held by them. It may be safely assumed, therefore, that this act of Assembly has made no change whatever in the law as regards the matter now under consideration.

By another act of Assembly it has been enacted, 'that if any person hath died, or shall hereafter die, without leaving personal estate sufficient to discharge the debts by him or her due, and shall leave real estate which descends to a minor, or person being idiot, lunatic, or *non compos mentis*, or who shall afterwards become *non compos mentis*, or shall devise real estate to a minor, or person being idiot, lunatic, or *non compos mentis*, or who shall afterwards become *non compos mentis*, the Chancellor shall have full power and authority, upon application of any creditor of such deceased person, after summoning such minor, and his appearance by guardian, to be appointed as aforesaid, and hearing as aforesaid, or after summoning the person being idiot, lunatic, or *non compos mentis*, and his appearance by trustee, trustees or committee, to be appointed as aforesaid, and hearing as aforesaid, and the justice of the claim of such creditor is fully established, if, upon consideration of all circumstances, it shall appear to the Chancellor to be just and proper that such debts should be paid by a sale of such real estate, to order the whole or part of the real estate, so descended or devised, to be sold for the payment of the debts due by the deceased.' (g)

On adverting to the law as it has been shewn to have existed when this act of Assembly was passed, it will be seen, that a specialty creditor, to whom the heir was bound by the contract, had an unquestionable right to proceed, at his election, against the heir, or the executor of his deceased debtor; that there being a sufficiency of personal estate to pay the debt was no defence for the heir; that if the heir paid the debt he might, by bill in