

who, as a creditor, may have a right to have it sold as assets to be applied in satisfaction of the deceased's debts. (k)

In this case, long after a suit had been instituted by these very devisees themselves, to have the real estate of this deceased debtor sold for the payment of his debts, they applied to the general assembly and obtained this special act, authorizing them to raise money for the payment of those debts by way of mortgage instead of a sale of the realty; which act they did not ask this court to carry into effect for their benefit, until after the creditors of their testator had been publicly notified to come in, and some of them had actually become parties by filing the vouchers of their claims. So far as this private act lends its aid in removing any disabilities or difficulties which had rendered it impracticable for these devisees, of themselves, to apply the estate of the deceased debtor to the payment of his debts, it may be permitted to stand; but it certainly cannot be suffered to operate so as to hinder or delay creditors in the recovery of their debts, any more than a mere voluntary mortgage, or sale made by an heir or devisee of himself, pending a suit against him, could be allowed to be of any avail, in preventing a then plaintiff creditor from obtaining a decree for a sale for the satisfaction of his claim.

It is clear, therefore, that this private act of assembly, so far as it has been presented as an obstacle to the relief prayed by this bill, can be of no avail, and must be regarded as utterly unconstitutional and void.

On taking a retrospective view of the various proceedings, which have been had, in relation to this estate, and the disposition which has been already made of some of it, for the benefit of the devisees and creditors of the deceased, it is sufficiently obvious, that, to facilitate the further progress of the court in this matter, it will be necessary to consolidate, and have them henceforth considered as one suit, covering all matters within reach of a creditor's suit, and of a bill filed by the legatees and devisees, for a distribution of the surplus after the payment of debts. And it is also obviously necessary, that these executors and trustees should, all of them, be called to an account. I shall therefore order a sale, consolidate the cases, and direct an account to be taken.

Whereupon it is *Decreed*, that the real and personal estate of *William Campbell*, deceased, yet remaining undisposed of, or so

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(k) Co. Litt. 102; 1 Pow. Mortg. 547, note R.; Sugd. Vend. & Pur. 535; Calvert Parties, 101.