

provided that the Surplus of the Produce of what should be raised out of the *real Estate*, should go to the very same Person who was Devisee in Tail of the *real Estate*.

22. Bill by the Heir at Law against the Executors, to have an Account of the personal Estate of the Testator, and that it might be applied in Exoneration of the *real Estate* devised to Trustees, to be sold for Payment of Debts and Legacies. The Case was this: *W.* by Will devised several *Lands to Trustees, to be sold for Payment of his Debts and Legacies*, and devised *all the Residue of his personal Estate to his Wife*, and gave her also £600 out of the Money to be raised by Sale of the *Trust Estate*, and makes her *Executrix*. *Harcourt, C.*, said, Here is not only a Devise over of the Residue of his personal Estate to his *Executrix*, but he gives her further the Sum of £600 out of the *real Estate*; so that he did not think the Residue of the personal Estate sufficient for her, but gave her £600 out of his *real Estate*; which is the strongest Presumption imaginable of the Intent of the Testator, that his Wife should have the Residue of his personal Estate. And this makes it differ from the Case of *Garroway and Christ's Hospital*; for there was no Devise unto his Executors out of his *real Estate*. Bill dismiss'd, *quoad* an Account of his *personal Estate*. *Mich.* 12 Ann. [1713] *Waise and Whitfield*, 8 *Vin. Abr.* 437, *pl.* 19. (This Case is misplaced in Point of Time; and also the following Cases until you come to (U).)

[375] 23. One devises *Lands to his Executors, for and until Payment of his Debts*. This is but a Chattel Interest. 22 May 1717, *Carter and Barnardiston*, 1 *Will. Rep.* 505, 509.

24. *J. S.* being seised in Fee of a *real Estate*, and possessed of a personal Estate, devised one third Part of *all his Estate whatsoever* to *M.* his Wife, and devised to his son *B.* and to his Heirs *two Thirds of all his real and personal Estate, upon Condition to pay his Debts*. The Judges and Master of the Rolls (on Time taken to consider of it) were all of Opinion, That *M.* the Widow should have her Thirds, *not liable to the Debts*, they being by the express Words of the Will fixed upon the other two Thirds; by which the Devise to the Wife was rendered *clear*; and upon this Point was cited *Dy.* 59 *b.* 164 *a.*; *Goldsb.* 149. *Hil.* 1725, *Chester and Painter*, upon an Appeal to the King in Council from a Decree in the Court of Chancery in the *Island of Antigua*, 2 *Will. Rep.* 335, 337.

25. One seised of Lands in Fee in *G.* that were in Mortgage, and also seised in Fee of other Lands, devised his Lands in *G.* to *J. S.* at her Age of twenty-one, *subject to the Incumbrances that were thereupon*; and ordered, that the Rents and Profits of the Premises should, during the Infancy of the said *J. S.* be paid to her Father, for her sole Use; and *devised other Lands to Trustees, In Trust to pay the Testator's Debts*. The Master of the Rolls held that this Mortgage shall be discharged by Moneys arising from the Sale of the *Trust Estate*. *Mich.* 1726, *Serle and St. Eloy*, 2 *Will. Rep.* 386.

26. *A.* seised in Fee of a *real Estate*, and possessed of a *personal Estate*, by Will directs that his Legacies shall be paid out of his *real Estate*, and devises his *personal Estate* to his Children. His Children shall have the personal Estate free from the Legacies, *but charged with the Debts*; and the *real Estate* only shall be charged with the Legacies. Decreed *per* his Honour, *Trin.* 1726, *Heath and Heath*, 2 *Will. Rep.* 366. (If the Legacies had been only *charged* upon the *real Estate*, yet the *personal Estate* should have been *first* applied to pay them, and so should it have been against a *residuary* Legatee (*vide* 2 *Will. Rep.* 335); but in this Case the *real Estate being the Fund appointed, and the whole personal Estate given away by the Will*, therefore the Legacies must be paid out of the *real Estate* solely; but the Debts shall still be paid out of the *personal Estate*, the Will not ordering the Debts to be paid out of the *Real*. *Per* his Honour. *Ibid.*)

27. Devise of the Rents and Profits of Lands 'till his Son attains twenty-one, towards Payment of Debts; and if my Son die before twenty-one, my Debts being paid, then to *A.* and the Son dies before twenty-one; yet the Rents and Profits, not only 'till he would have attained twenty-one, but also beyond, 'till the Debts be paid, shall be applied for that Purpose. *Mich.* 1691, *Martin and Woodgate*, *Prec. in Chan.* 34. (*Vide* [P.] 370, *Ca.* 5.)

28. In Case of a *Devise of Lands to pay Debts*, if the Creditors bring a Bill to compel a Sale, the Heir is generally to be made a Party; *secus* in Case of a *Trust created by Deed to pay Debts*. *Trin.* 1730, 3 *Will. Rep.* 92. (*Vide* *Tit. Bills* [2 *Eq. Ca. Abr.*], *P.* 169, *Ca.* 22.)