

See the note to the preceding Statute. A distinction formerly prevailed between a devise to a trustee and to an executor, but this distinction has been overruled; see *Silk v. Prime*, 1 Bro. C. C. 138 n, where it was said that hardly a case could be suggested where the assets would be legal, but where the executor has a naked power to sell *qua* executor, *Clay v. Willis*, 1 B. & C. 364. The value of the doctrine of equitable assets is considerably diminished here by the circumstance of lands being liable to debts by simple contract, and accordingly since the Act of 1785, ch. 72,¹ the terms in a will, "after my debts and funeral charges are paid, I devise and bequeath," &c., are held no longer to charge the real estate of the testator with the payment of debts, in the event of there not being sufficient personalty, but to be immaterial and inoperative, **Cornish* 284 v. *Wilson*, 6 Gill, 299.² Indeed, as the distinction between specialty and simple contract debts is destroyed, legal assets are distributable as equitable assets, and the old distinction between them is reduced to a mere question of jurisdiction.

Debts are a charge upon the real estate if there is insufficient personalty. But proceedings to sell the real estate of a deceased debtor must be taken in equity, except where the appraised value does not exceed twenty-five hundred dollars, when by the Act of 1866, ch. 81,³ the Orphans Court have concurrent jurisdiction with the Circuit Courts, see *Young v. Twigg*, 27 Md. 620; *Cornish v. Wilson*, 6 Gill, 299.

¹ See Code 1911, Art. 16, sec. 218. See note to 3 & 4 W. & M., c. 14.

² *White v. Kauffman*, 66 Md. 92.

³ Code 1911, Art. 93, sec. 293; *Simpson v. Bailey*, 80 Md. 421.

CAP. XIX.

Avowries shall be made by the Lord upon the Land, without naming his Tenant.

Where as well the Noblemen of this Realm, as divers other persons, by Fines, Recoveries, Grants, and secret Feoffments, and Leases made by their Tenants to persons unknown, of the Lands and Tenements holden of them, have been put from the knowledge of their Tenants, upon whom they should by order of the Law make their Avowries for their Rents, Customs, and Services, to their great Losses and Hindrances.

II. Be it therefore enacted, established, and ordained by Authority of this present Parliament, That wheresoever any manner Lands, Tenements, and other Hereditaments be holden of any manner person or persons, by Rents, Customs, or Ser-