

express provisions, and the spirit of several legislative enactments, add the interest which had accrued upon the judgment below to

his bond on the 3d of January, 1788; and also in the further quantity of 12,940 lbs. of crop tobacco, and in the sum of £341 5s. 9d., on open account. And being so indebted to this plaintiff and to several others, he died in the month of June, 1790, intestate and without issue, leaving the defendant, an infant, to whom his real estate, consisting of a moiety of two adjoining parcels of land, containing about — acres, descended: which lands had been devised to him and this defendant, by their father, in the words following:

“I give and bequeath all the lands that I am possessed of to be equally divided between my two sons, Alexander and John Alexander, to them and their heirs for ever; but, if in case either of my said sons should die without any heir lawfully begotten of his body, or before he arrives at the age of twenty-one years, that then in such case his part to be the sole right and property of my surviving son, his heirs and assigns, forever. My will and desire is, that my son Alexander do, out of his part of my estate, expend so much money as will be sufficient to give my son John Alexander a good education. Whereas I have given all my land to my two sons, my will is, that the division line shall begin at Rake's Land, and so running towards Fishing Creek: my son Alexander to have the first choice of the land. The residue and remainder of my personal estate I give to be equally divided between my two sons, their heirs and assigns, forever. I constitute and appoint my loving son Alexander Frazier whole and sole executor of this my last will and testament.”

The bill further states, that Alexander Frazier was above the age of twenty-one at the time of his death; and, in virtue of the election given to him by this devise, did in his life-time, elect to have the southermost moiety of the land so devised, which he improved by erecting houses thereon, and repairing those already built, at considerable expense; that the personal estate of the said Alexander Frazier amounted to no more than £850 13s. 4d. as appeared by the inventory returned by the defendant John A. Frazier, who took out letters of administration on the same, and was therefore insufficient for the payment of his debts. Whereupon it was prayed, that John A. Frazier, being an infant, a guardian might be appointed for him to make answer; and that the real estate of Alexander Frazier, deceased, or so much thereof as might be necessary, might be sold for the payment of his debts.

The defendant John A. Frazier, on the 7th of May, 1792, filed his answer by his guardian *ad litem*, in which he admitted the death of his brother Alexander, as stated, and that the lands had been devised to him by their father, as set forth: but the interest which they thereby took, he submitted for decision: that by the will of their father, his brother was required to maintain and educate him; that his brother, after the death of their father, took possession of all his real and personal estate, and received the whole of the rents and profits thereof, which he applied to his own use; and maintained, but did not educate this defendant. Wherefore this defendant claims to be considered as a creditor of his brother, with a preference over others to the value of one-half of the rents and profits of their estate, and also to the value of the expense of the education which he ought to have obtained; that his brother erected no new houses on the land, but repaired some, as stated; that he made, in his life-time, no election to take the southermost half of the land, as stated; that his personal estate was wholly insuffi-