

payment of money, unless it should appear that the guardian of such infant had consented thereunto; and also, that such infant would not sustain any inconvenience from such direction. 1773, ch. 7; 1778, ch. 22; *Prutzman v. Pitesell*, 3 H. & J. 80; *Partridge v. Dorsey*, 3 H. & J. 320, 305; *Pue v. Dorsey*, 1 Bland, 139, note. Under this law, which relates only to proceedings in Chancery, any lands, subject to the payment of debts, held by an infant, might have been sold, with the consent of his guardian, without allowing to the infant the privilege of having the parol to demur until he attained his full age. But this Act contains not the slightest allusion to any distinction between the application of the real and personal estate of a deceased debtor to the payment of his debts; nor is susceptible of being so construed as to have any bearing injurious to the legal rights of his creditors; or so as to make the least change in that equity, which arises in a creditor's suit, between the real and personal representatives of the deceased, by which the heirs are allowed, for their own peculiar benefit, without prejudice to creditors, to have the personal estate first applied in payment of his debts. In these respects the then existing principles of law and equity have not been altered or affected in any way whatever by this Act of Assembly.

By the Act of Assembly which prescribes the mode of reviving actions at common law, which may have abated by the death of * either party, it is provided, that upon the death of either plaintiff or defendant in any such action, involving the title **47** to land, if the heir or devisee of the deceased be an infant, such action shall not be tried during his minority; unless his guardian, or next friend, satisfied the Court, that it will be for his benefit. 1785, ch. 80, s. 2; 3 *Blac. Com.* 300. And in the same Act of Assembly, it is declared, that in the payment of the debts of deceased persons, no creditor shall be entitled to any priority, except such as have obtained judgment against the deceased; nor shall any preference be given to creditors in equal degree by the executor or administrator, who shall observe the following rules, where it is apprehended the deceased has not left personal estate sufficient to satisfy the debts due by him; to wit; to pay no debt until the end of twelve months after the death of the deceased; to give notice for all his creditors to produce their claims after the expiration of that time at a certain day and place properly authenticated, when the executor shall first discharge all judgments in full, or equally and in due proportion; and next shall divide the assets equally among all other creditors, without priority or preference, &c. And if any executor or administrator shall not observe these rules, he shall be liable to pay, out of his own estate, the loss sustained by any creditor in consequence thereof. Altered by 1798, ch. 101, sub-ch. 8. And in case there be no personal estate sufficient to pay the debts of the deceased, and he shall have left lands to