

descend, or hath devised the same, and the heir or devisee may be liable to pay the debts of the deceased, to the value of the lands descended or devised, then such heir or devisee, being of full age, shall pursue the rules aforesaid, in the payment of the debts of the deceased; and upon default, such heir or devisee shall be liable to pay out of his own estate the loss sustained by his misconduct or neglect. And that all Courts of law and equity shall observe the directions of this Act. 1785, ch. 80, s. 7; *Webster v. Hammond*, 3 *H. & McH.* 131.

It is clear, from the language of this law, that, as regards the privileges of infants, its provisions are confined altogether to actions at common law; and that, as regards the administration of deceased persons' estates, it merely prescribes rules for the payment of debts, by which executors and administrators, as well as adult heirs and devisees, so far as they may be liable in respect of assets, are alike to be governed. This law apparently recognizes the rule in equity, that the personal estate is the primary and natural
48 * fund for the payment of debts; but there is no expression in it which can be so construed as to lessen or impair the previously existing legal rights of creditors; or which intimates an intention to prevent a specialty creditor from suing and enforcing payment at common law from the heir alone, in respect of real assets descended to him; or which would prevent a simple contract creditor, under a creditor's bill in Chancery, from obtaining relief upon the same principles, and to the same extent as a bond creditor from the heirs or devisees of the deceased in respect of the real assets held by them. It may be safely assumed, therefore, that this Act of Assembly has made no change whatever in the law as regards the matter now under consideration.

By another Act of Assembly it has been enacted, "that if any person hath died, or shall hereafter die, without leaving personal estate sufficient to discharge the debts by him or her due, and shall leave real estate which descends to a minor, or person being idiot, lunatic, or *non compos mentis*, or who shall afterwards become *non compos mentis*, or shall devise real estate to a minor, or person being idiot, lunatic, or *non compos mentis*, or who shall afterwards become *non compos mentis*, the Chancellor shall have full power and authority, upon application of any creditor of such deceased person, after summoning such minor, and his appearance by guardian, to be appointed as aforesaid, and hearing as aforesaid, or after summoning the person being idiot, lunatic, or *non compos mentis*, and his appearance by trustee, trustees or committee, to be appointed as aforesaid, and hearing as aforesaid, and the justice of the claim of such creditor is fully established, if, upon consideration of all circumstances, it shall appear to the Chancellor to be just and proper that such debts should be paid