

stand on an equal footing with other claims of the same nature; (x) and as it had been previously declared, that an heir or devisee should pursue the same rules in the payment of debts out of the real assets as were prescribed for an executor or administrator; (y) it would seem to follow, that the claim of an heir or devisee should now, in like manner, be held to stand only upon an equal footing with all other claims of the same nature; and be allowed to retain only for a due proportion. (z)

Here, however, it may be well to observe, that although it is directed, by an act of assembly, that all judgments against the deceased shall be first discharged, if the assets be sufficient; but if not, and there be more judgments than one, a proportionable division of the assets shall be made among them, in affirmance of the common law, as to the personalty, (a) and then, it is further declared, by the same act of assembly, that, in case there be not personal estate sufficient, the heir or devisee shall pursue the rules and directions aforesaid, in the payment of the debts of the deceased; and that all courts of law and equity shall observe those rules and directions. (b) Yet as nothing is said, in that legislative enactment, as to any lien upon the real or personal estate; and, as it would be impracticable, in many cases, to satisfy judgments in due proportion only; and at the same time sustain the liens of mortgagees and vendors, it has been always held, that notwithstanding what is said in that act of assembly, all liens upon the realty must remain in full force; and that the rules therein laid down can only apply where no such lien exists on the personal estate by a *feri facias* actually delivered to the sheriff; or on the real estate by a mortgage or judgment made or recovered in the life-time of the deceased. (c) And, consequently, since the real estate of a debtor, has been made liable to the payment of his debts by statute; and can only be properly applied in payment of them, after his death, in a court of equity, that estate can only be regarded as *legal assets*, not having been raised where there were none before; and, therefore, must be administered accordingly, subject to all the legal and equitable liens, preferences and priorities of those creditors who may be entitled to obtain satisfaction from them. (d) That is, they must be first applied in discharge of all costs, so as thus to

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(x) 1798, ch. 101; sub ch. 8, s. 19.—(y) 1785, ch. 80, s. 7.—(z) *Player v. Foxhall*, 1 Russ. 538; *Winter v. Hicks*, 5 Cond. Cha. Rep. 490.—(a) *Will. Exrs.* 660.—(b) 1785, ch. 80, s. 7.—(c) *Tyson v. Hollingsworth*, ante 333; *Pattison v. Frazier*, ante 372.—(d) 2 Fonb. 403; *Silk v. Prime*, 1 Bro. C. C. 139.