

either party, it is provided, that upon the death of either plaintiff or defendant in any such action, involving the title 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, satisfy the court, that it will be for his benefit. (d) 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. (e) And in case there be no personal estate sufficient to pay the debts of the deceased, and he shall have left lands to 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. (f)

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

(d) 1785, ch. 80, s. 2; 3 Blac. Com. 300.—(e) Altered by 1798, ch. 101, sub ch. 8.—(f) 1785, ch. 80, s. 7: Webster v. Hammond 2 H. & M. 77