against him." Plaintiff in replication pleaded that the action should not be barred by anything pleaded since defendant at the time of the issuance of the original writ had goods and chattels of Tracey's in his hands for administration to the value of the debt sued for and this he prayed might be inquired into by the court. In rejoinder Cecil pleaded that defendant "hath wholey administred" and put himself upon the court, as did plaintiff. The court, after having heard the witnesses on both sides adjudged that plaintiff recover the amount sued for out of the goods and chattels of Tracey at his death in the hands of defendant to be administered, "if he hath so much thereof in his hands to be administred." [37]

Several cases involved the principle that an executor or administrator should first pay or satisfy debts of a higher nature or quality. In a case in the November 1698 court, *Tench* v. *Edmundson's Administrator,* defendant entered a special plea in bar that "there is Severall Debts Due by Speaciallytyes and other obligations of a higher Nature then the Defendant in his Declara[tion] mentioned which by Law ought to be Paid before the Said Defendant" which he was ready to averr and prayed judgment. Whereupon plaintiff in replication alleged that there were no debts of a higher nature and craved judgment. The court thereupon gave judgment for plaintiff to be levied upon the goods and chattels of decedent which should come into the hands of defendant as administrator. [38]

In October 1699 the court heard four actions against the executors of Jonathan Willson for debts allegedly owed by decedent. In each case defendant pleaded that the decedent at the time of his death had several unsatisfied judgments outstanding against him (two in the Provincial Court and one in Charles County Court) which being debts of a higher nature than those of the plaintiff ought to be first paid and satisfied, the judgments referred to being produced in court. In addition, it was pleaded that the executors did not have assets in their hands belonging to the decedent's estate sufficient to pay the debt sued for and this they were ready to aver. Therefore, they demanded judgment if the plaintiff ought to have his action. Plaintiff's attorneys in each case pleaded, in part by way of demurrer and in part by way of replication, that plaintiff ought not to be barred by the aforesaid plea, since supposing it to be true as alleged, there was a considerable list of debts due to the decedent's estate from several persons which would be assets in the hands of the executors when received in excess of the debts of a higher nature alleged in defendant's plea. Therefore, plaintiff in each case prayed judgment against the executors to be paid out of such debts when received by the executors. Defendant in each case then reiterated his earlier plea and put himself upon the court as did the plaintiffs. In each case it was adjudged that plaintiff recover the amount sued for out of the goods and chattels of which decedent died possessed which came into the hands of his administrators. [39]

It was provided by statute that no person living or trading within the province should sue at law in any court of the province for any debt due or owing him by account upon book or otherwise, not under the hand and seal of the debtor, unless the creditors first demanded the same of the debtor at his habitation or by note left at such habitation in the absence of the debtor. In the event any creditor sued contrary to such provision, he was to lose his costs of suit and to be liable to the debtor for all such damages as accrued by such vexatious and unjust suit. In *Meriton* v. *Groome,* an action of trespass on the case at the September 1697 court, de-

37. *Infra* 567–69.

38. *Infra* 396–98. For implied recognition of the principle of priority of debts of a higher nature or quality see 19 *MA* 209.

39. *Infra* 556–59, 561–65.