

sonal estate be first applied in full satisfaction of the absolute judgments rendered against the administrator; and then, that the residue of the personalty, if any, be applied in satisfaction of those claims which, as against it, have not been barred by the Statute of Limitations.

The claims of these plaintiffs, designated in the auditor's report as claims No. 1, 2, and 3, have been established by the decree of the 4th of May, 1830; and, therefore, cannot now be impeached by any creditor coming in under that decree; unless upon the ground of mistake, fraud, or collusion with the defendants. *Harrison v. Rumsey*, 2 Ves. 488; *Welch v. Stewart*, 2 Bland, 38. No objection of that kind has, however, been made or alluded to; and, therefore, the exceptions against them must be overruled. But then although these plaintiffs had, previously to the institution of this suit, obtained absolute judgments at law against the administrator of the deceased; yet having alleged in their bill, that there was not a sufficiency of personal estate to satisfy their claims; and **520** \*having obtained a decree for a sale of the realty founded on an admission of the truth of that allegation, they cannot now have a decree over, against the administrator, for any balance of their claims, that may remain unsatisfied; or take any other advantage of the absolute nature of those judgments which they have thus abandoned; or be regarded in any other way than as standing among those general creditors whose claims are not barred by the Statute of Limitations. *Sheppard v. Kent*, 2 Vern. 435.

In England and here, formerly, it was necessary, in the administration of a deceased debtor's estate, to attend to the distinction between debts due by specialty and those due by simple contract; because, according to the order in which the law directed the debts of the deceased to be paid, those due by specialty were to be first paid; and where the assets were insufficient to pay all, and the executor or administrator, in violation of this rule, paid them away in satisfaction of simple contract debts, he therefore made himself liable for the remaining unsatisfied specialty debts. *Pinchon's Case*, 9 Co. 88; *Dep. Com. Gui.* 125. Where, however, the assets were sufficient to pay all, a simple contract debt might be safely paid, at any time, without regard to this precedence in favor of specialty debts. *Turner v. Turner*, 1 Jac. & W. 39. But by our Acts of Assembly, prescribing the order in which the debts of the deceased shall be paid from the personal assets; 1798, ch. 101, sub-ch. 8, s. 17; and, on a deficiency thereof, from his real assets; 1785, ch. 80, s. 7; the distinction between debts due by simple contract and by specialty has been, in this respect, abolished; and, therefore, there can be no occasion to advert to it for any such purpose. It should, nevertheless, be attended to in all cases where the debtor has, by deed, bound his heirs as well as himself