

being himself the executor, could institute no suit for the recovery of the debt. *State, use of Stevenson vs. Reigart*, 1 *Gill*, 1. Besides, by our testamentary system, the interposing the plea of limitations is referred to the honesty and discretion of the executor or administrator, and he, and he alone, can make the objection. *Act of 1798, ch. 101, sub ch. 9, sec. 9.*

But with regard to the right of these complainants to file this plea for the protection of their interest, whatever it may be, in the real estate of William Spencer, more doubt may be entertained.

It seems to be settled that a trust in a will to pay debts upon which the statute of limitations has closed at the time of the death of the testator, will not revive them. This is the conclusion to which Chancellor Kent came after an examination of all the cases, and I am aware of no decision in this state or elsewhere to the contrary since. *Roosevelt vs. Mark*, 6 *Johns. Ch. Rep.*, 266, 293. The opinion of the Chancellor is in accordance with the decision in *Burke vs. Jones*, 2 *Ves. & Bea.*, 275, which he considered as announcing and establishing the true and reasonable doctrine upon the subject.

It might, perhaps, be questioned whether the statute of limitations had actually taken effect upon this claim at the death of William Spencer. The contract upon which it is founded does not very clearly specify when the money for the land sold by Isaac to William Spencer was to be paid. The agreement provides that Peacock's bond for \$2000, and other bonds payable in 1, 2, 3, 4 and 5 years, shall be taken by the vendor in satisfaction of the purchase money, but there is no engagement on the part of the vendee to pay at a specified period, nor does it clearly appear at what time an action could have been instituted by Isaac Spencer upon this contract, and until then, of course, limitations did not begin to run. It is possible that no suit could have been brought against William Spencer upon this contract, until proceedings had been exhausted upon the bonds of Peacock and others.

The defendants, however, insist, that conceding that the statute of limitations had taken effect upon this claim before