by one who is neither executor nor administrator to pay a debt of the deceased is void as being only *nudum pactum*, see Nelson v. Serle, 4 M. & W. 795, overruling Serle v. Waterworth, *ibid.* 9. All promises by an executor to pay the debt of his testator or answer damages out of his own estate, unless by deed, required at common law a consideration to support them, and this requirement is not dispensed with by the Statute, which in addition demands that the promise shall be in writing, Rann v. Hughes, 7 T. R. 530 *n.*, the leading case on this subject; Forth v. Stanton, 1 Wms. Saund. 211 a. *n.* (1); Chapman v. Dixon, 4 H. & J. 527; and a case has occurred, where a promise having been made by executors in writing to pay a legacy, and payments made by them in consequence of it under a mistake as to the liability of the testator's estate therefor, the promise was held to be without consideration, Gough v. Finden, 7 Exch. 48. The most usual considerations for such a promise are stated by Lord Hardwicke in Reech v. Kennegal, 1 Ves. Sen. 123. "At law, if an executor promises to pay the debt of his testator, a consideration must be stated; as of assets come to his hands; or of forbearance; or if an admission of assets is implied by the promise; otherwise it will be but *nudum pactum* and not personally binding upon the executor." The consideration of assets has been held in several cases to support an action at law upon a promise by an executor to pay a *legacy*, Atkins v. Hill and Hawkes v. Saunders, Cowp. 284 and 289, but this doctrine was overruled in Deeks v. Street, 5 T. R. 590, affirmed in Jones v. Tanner, 7 B. & C. 542, where a like rule was held as to an action at law for a distributive share of an intestate's estate, and approved and followed in Kent v. Somervell, 7 G. & J. 265 (and see Somervell v. Somervell, 3 Gill, 276), though the rule with regard to specific legacies is different; and see Conway v. Green, 1 H. & J. 151; but an action at law has been maintained on an administrator's bond for a legacy, where he had passed his final account, see Hannon v. State, 9 Gill, 440; 2 Gill, 42, S. C. However, in respect of a debt, such an action will lie against the executor in his individual capacity, and the judgment will be *de bonis propriis*, Trewinian v. Howell, Cro. El. 91; see Forbes v. Perrie, 1 H. & J. 109. An implied admisison of assets will arise where an executor submits in broad terms to pay whatever shall be awarded on an arbitration; he thereby makes himself personally liable to pay what is awarded, Barry v. Rush, 1 T. R. 691; Robson v. ———, 2 Rose, 50; Reddell v. Sutton, 5 Bing. 200; but it is otherwise where the terms of the submission or of the award do not so bind him, as in Pearson v. Henry, 5 T. R. 6; Love v. Honeybourne, 4 Dowl. & R. 814. A very general consideration for such a promise is where a creditor, at the request of the executor, forbears to sue him, in which case it is immaterial whether he has assets or not at the time of the promise, as to which see Barber v. Fox, 2 Wms. Saund. 137 b. c. d. *in notis*. The consideration for the promise in this as in other cases under this section must appear upon the writing, and the promise must be an unqualified one, Hamilton v. Terry, 21 L. J. C. P. 132. If, however, an executor should enter into a binding contract with a creditor or legatee to pay a debt or legacy, he may in equity be substituted to the rights of such creditor or legatee, see Stewart v. Carr, 6 Gill, 430; payment, however, by an executor is not conclusive of assets as between the heir at law and excutor, when the latter seeks to be reimbursed out of the real estate.