Although the words of the Act of 1823, ch. 131, sec. 2, are very strong, it was held in Stewart v. Carr, 6 Gill, 430, that it did not apply to cases where the notice to the executor was given through the medium of *lis pendens*, or been in due time followed by it. Numerous cases, said the Court, must arise where the authentication of claims in the particular mode prescribed by the Acts of Assembly is impracticable *and **584** for the recovery of which resort to a court of justice is the only alternative left to the creditor. Were the act to receive a literal construction, it would be in the power of an executor, in almost every estate, to prevent any judgment against him by making a final distribution of the estate pending the litigation. A creditor might in like manner be defeated, if pending a suit in Chancery against the executor in whose exclusive knowledge rested the existence and justice of the claim, a final distribution were made, although at the time the executor well knew that nothing was wanting but the filing of his own answer in Chancery (which in a few days he must be compelled to file), conclusively to establish the creditor's claim. The construction given to the third section of the Statute of William & Mary was, that a judgment not docketed under it was to be regarded as a debt by simple contract only, and entitled to no preference in administration;[8] and, therefore, on an issue of *plene administravit* the executor might show that he had applied all the assets to the payment of bond debts, or simple contract debts, before action was brought, Hickey v. Hayter, 6 T. R. 384, which was the first case upon the Statute, and the rule was the same in equity, Landon v. Ferguson, 3 Russ. 349. In Hopwood v. Watts, 5 B. & Ad. 1056, (see Braithwaite v. Watts, 2 Tyr. 293), issue was entered in a cause and docketed according to the practice of the office of judgments. The plaintiff in 1828 recovered damages and costs, and entered final judgment on the roll, but the judgment, according to a practice said to have prevailed for 100 years, was not docketed as required by the second section of this Statute. And on an application to the Court in 1834 to order the judgment to be docketed *nunc pro tunc*, it was held that the Court had no power to make such order.

It was also held, that notice of the judgment in any other way than by its being docketed under the Statute is of no consequence; it will not be entitled to preference in administration; and it is unnecessary for the defendant to allege in his plea that there was no docket, Hall v. Tapper, 3 B. & Ad. 655. And so, on the other hand, an outstanding judgment against a testator, not docketed according to the directions of the Statute, cannot be pleaded by the executor to an action on simple contract, Steel v. Rork, 1 B. & P. 307. But a judgment obtained against an *executor*, though not docketed, is entitled to a preference over debts by simple contract in the administration of the testator's estate.

A judgment must be properly entered.—To bind mortgagees and purchasers of land the judgment must be docketed rightly, for the docket cannot be amended, see Sale v. Crompton *per nomen* Compton, 1 Wils. 61; and it is said also, that the judgment cannot be docketed after the time, Tidd Prac. 940.[9] The remedy in such cases is against the clerk, *ibid.* 941,

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[8] Van Gheluive v. Nerinckx, 21 Ch. D. 189.

[9] See note 1 *supra*.