disappoint creditors,[35] such as selling at an under-value, or omitting to sell at a good price, and the goods are afterwards taken from them,[36] or releases of debts due the estate, or delaying an action until the debtor is enabled to plead limitations,[37] or neglecting to call in money of the testator until the debtor becomes bankrupt, or the paying inferior debts before one of a higher nature, unless the executors have no notice of the latter, but if they pay the inferior debt with their own money, as the property of the assets is not changed this is no *devastavit*, 1 Wms. Saund. **592** 219, Wheatley v. Lane. *And allowing one term to pass before suing for the recovery of a debt is not sufficient to charge an executor for a *devastavit*, Gwynn v. Dorsey *supra;* see Ratcliffe v. Winch, 17 Beav. 217. So the sudden depreciation of stock, retained by an executor to abide the event of a suit, is no *devastavit*, Dugan v. Hollins *supra*.

Suits against executors and administrators.—An absolute judgment against an executor amounts to an admission of assets,[38] Gaither v. Welch, 3 G. &

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[35] Such as failure through negligence to collect a debt due the estate by a legatee, Hoffman v. Armstrong, 90 Md. 123; State v. Wilmer, 65 Md. 178; improper payment of legacy, Hindman v. State, 61 Md. 471; transfer to life tenant of the residue of the personal estate and allowing her to consume it, Brady v. Brady, 78 Md. 471. An executor is not liable for the estimated rental value of testator's office simply because he did not advertise it or employ an agent to rent it. Handy v. Collins, 60 Md. 235.

[36] An executor who knows of the existence of a debt and fails to convert bank shares into cash to pay it, the shares subsequently becoming worthless, is liable for a *devastavit* at suit of the creditor. *In re* Baker, 20 Ch. D. 230. See also *In re* Gale, 22 Ch. D. 820; *In re* Marsden, 26 Ch. D. 783; *In re* Birch, 27 Ch. D. 622; *In re* Hyatt, 38 Ch. D. 609.

[37] An executor commits a *devastavit* who pays a debt which is unenforceable under the Statute of Frauds. *In re* Rownson, 29 Ch. D. 358. *Contra*, as to his failure to plead limitations. *In re* Rownson, *supra* and Code 1911, Art. 93, sec. 98; Gordon v. Small, 53 Md. 559.

In McGuire v. Rogers, 74 Md. 192, an administrator recovered a judgment; exceptions were taken at the trial but were not signed in time; plaintiff consented to their being signed after the time; and the judgment was reversed by the Court of Appeals without a new trial. It was held that the administrator was not personally bound to his estate for the amount of the judgment and that he was also entitled to his costs. The court said that while an administrator was bound to collect debts he was not bound to insist on an unfair advantage, or to maintain an unjust claim, or to prevent a suit from being fairly tried.

[38] It is conclusive of the existence of the debt and sufficiency of assets to pay it and a *fi. fa.* may issue thereon and be levied on lands of the executor as well as goods and chattels. Beall v. Osbourne, 30 Md. 8. But an administrator *d. b. n.* is chargeable only with unadministered assets which come into his hands, and the fact that a former administrator may have confessed a judgment and thereby admitted a sufficiency of assets to pay the same, does not preclude the administrator *d. b. n.* from plead-