J. 259, but as between a creditor (even the executor himself) and the heirs at law, where it is sought to subject the real estate to payment of debts, it is not conclusive, but a deficiency of assets may be shewn, and *e converso*, such a judgment is no evidence of the claim against the heirs, *ibid.* Therefore to debt on such a judgment suggesting a *devastavit* by the first executor, which is now the common remedy, Wheatley v. Lane, 1 Wms. Saund. 219 d. *n.* 8, *his* executor cannot plead that the first executor fully administered, or any other plea that the first executor had no assets to satisfy the judgment. Sergeant Williams observes in his note to Wheatley v. Lane, just cited, that an action against the executor of the executor, suggesting a *devastavit* by the first executor, is in the *detinet* only, and the judgment *de bonis testatoris;* 2°, the action may be brought in every case, where the executor was in his life-time guilty of any act amounting in law to a *devastavit;* and 3°, he may plead *plene administravit;* see as to the form of pleading such a plea by him in England, Wells v. Fydell, 10 East, 315, and the form would be the same here. It has been determined in several cases, Stewart v. Carr, 6 Gill, 440; Rawlings v. Adams, 7 Md. 27; Glenn v. Hebb, 17 Md. 260, that an executor to relieve himself under the plea of *plene administravit*, by showing payment or distribution before notice of the plaintiff's claim, must appear to have given the notice required by the Act of 1798, ch. 101, sub-ch. 8, sec. 13; Code, Art. 93, sec. 110 (see sec. 109).[39] But it is presumed that it is unnecessary to aver or negative notice. For in *plene administravit* the executor cannot shew payments, &c. made before giving notice, see Rawlings v. Adams; see, however, Code, Art. 75, sec. 22, sub-secs. 99-101,[40] where forms of the pleas are given, which under Union Bank v. Tillard, 26 Md. 446, are conclusively good.

With us the representatives of a deceased executor are liable on his *joint* testamentary bond for a *devastavit* by the surviving co-executor, Clarke v. Williams, 6 G. & J. 288. But it is provided by the Code, Art. 93, sec. 106[41] (1720, ch. 24, sec. 2), see Art. 75, sec. 88[42] (1838, ch. 329), that no creditor shall bring any suit upon such a bond for any debt or damages recovered against the decedent, before a *non est* on a summons is returned against the administrator, or a *fieri facias* returned *nulla bona* by the Sheriff of the county where administration was granted or where the effects of the deceased lie, or such other apparent insolvency or

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ing to a *scire facias* issued on such judgment that the unadministered assets are insufficient to pay off the original judgment. *Secus*, however, as to an administrator of an administrator who must show how he has paid away the estate in order that the court may see whether there are assets in his hands chargeable with the payment of the judgment. When an administrator *d. b. n.* confesses judgment of *fiat*, he is bound thereby, but as against the sureties on his bond such confession is only *prima facie* evidence of sufficiency of assets. Kearney v. Sascer, 37 Md. 264.

[39] Code 1911, Art. 93, secs. 109 (as now amended), 108.

[40] Code 1911, Art. 93, sec. 24, sub-secs. 99-101.

[41] Code 1911, Art. 93, sec. 105; State v. Moore, 108 Md. 636.

[42] Code 1911, Art. 75, sec. 148.