

## \*POST v. MACKALL.

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## LUNATIC DEFENDANTS.—CREDITOR'S SUIT.—PLEADING LIMITATIONS.—EFFECT AGAINST HEIR OF A JUDGMENT AGAINST ADMINISTRATOR.—MARSHALLING ASSETS.—REVIVAL OF JUDGMENT.

A defendant shewn to be of unsound mind may have a guardian appointed to answer for him, without issuing a writ *de lunatico inquirendo*.

A decree for a sale of the realty, in a creditor's suit, in general establishes the plaintiff's claim, and the insufficiency of the personal estate. (a)

Where a creditor, of any kind, comes in under the decree he is bound by it; but where there is an outstanding incumbrance, the surplus will not be paid to the defendant to the prejudice of the purchaser. (b)

The Statute of Limitations cannot be put in by any one who has nothing to protect by it; and when relied on, in general terms, is applied according to the nature of the claim: is only to prevail as it may apply to the representative of the personalty or the realty; and runs up to the time of filing the voucher of the claim. (c)

It enures only to the benefit of him who relies on it.

The effect of an endorsement of payment as evidence to take a case out of the statute.

The mode of effecting a distribution where there are conflicting pleas of the statute.

The distinction between simple contract and specialty debts in general, and and as regards the Statute of Limitations.

An absolute judgment against an executor or administrator conclusive as between the parties to it; but not so as between such creditor and the heir; yet the heir may, to that extent, obtain reimbursement from the executor or administrator. (d)

The personal estate must be so disposed of as to leave no superannuated slave a burthen upon it, or upon the public.

The marshalling of assets in what cases it may be made without prejudice to the creditor. (e)

The lien of a judgment, which has been suffered to lapse, cannot be revived so as to overreach any then existing or intervening lien.

Commissions to trustees on money collected. (f)

THIS bill was filed on the 18th of June, 1829, by Joel Post, Allison Post, and Waldron B. Post, joint traders of the City of New York, and Henry O. Middleton of Virginia, against Benjamin B. Mackall, Edmund Key and Margaret, his wife, Louis

(a) See *Hammond v. Hammond*, 2 Bland, 306.

(b) Cited in *Hagan v. Walker*, 14 Howard, 37.

(c) See *Chew v. Farmers Bank*, 2 Md. Ch. 231.

(d) See *Iglehart v. State*, 2 G. & J. 236; *Gaither v. Welch*, 3 G. & J. 259.

(e) Cited in *Gen. Ins. Co. v. U. S. Ins. Co.* 10 Md. 528. See *Woollen v. Hillen*, 9 Gill, 186, note (c).

(f) See *Gibson's Case*, 1 Bland, 138, note (c).