

under the decree, are received in the shape, most usually, of exceptions made, as in this instance, upon which the Court looks only at the true nature and substance of the objection.

But it has been laid down, that if a creditor has obtained an absolute judgment against the executor or administrator, although it must be deemed conclusive of a sufficiency of personal assets, as between the creditor and the executor or administrator; yet it shall not be so held as between the creditor and the heir or devisee, so as to exonerate the real estate; but that an insufficiency of the personalty may be shewn by the creditor for the purpose of letting himself in upon the realty. *The State v. Cox*, 2 H. & G. 379; *Iglehart v. The State*, 2 G. & J. 245; *Gaither v. Welch*, 3 G. & J. 259; *Ellicott v. Welch*, 2 Bland, 247. And it has also been laid down, that a plea of the Statute of Limitations shall only enure to the benefit of him who pleads it under a creditor's bill; and consequently, in this case, where the Statute of Limitations can be sustained as a bar to any claim, it can only be allowed so to operate as to exclude them from coming in conflict with, or receiving any thing to the prejudice of the claim of him by whom the Statute of Limitations was pleaded. (h)

(h) *McCORMICK v. GIBSON*.—This bill was filed, on the 19th of January, 1824, by James McCormick, Jr., against Fayette Gibson, Edward R. Gibson, Nancy Gibson, Rebecca Gibson, Thomas P. Bennett and Harriet his wife, Joseph W. Reynolds and Ann his wife, James Tilton and Frances his wife, Clara Tilton, Nehemiah Tilton, Rigby Hopkins, John W. Blake, Edward Lloyd, and the President, Directors and Company of the Farmers Bank of Maryland.

The object of the bill was to have the real estate of Jacob Gibson, deceased, sold, because of the insufficiency of his personal estate, for the payment of the amount then due on a promissory note given by him for \$2,500, which had, by several endorsements, passed into the hands of the plaintiff. On the 10th of November, 1824, the defendant James Tilton, put in his answer. On the 27th of September, 1824, the defendant Edward Lloyd, filed his answer. On the 12th of October, 1824, the bank made answer, stating its defence; and shewing, that it held, as a security for its claim, a mortgage given by the deceased, of his tract of land called Marengo: but the deed of mortgage contained no relinquishment of the right of dower of the wife of the grantor; nor any personal covenant for the payment of the money.

On the 4th of February, 1825, the defendants Bennett and wife, filed their answer, in which, among other things, they say, "that they have always well hoped and believed, that the personal estate of the said Jacob Gibson, together with the proceeds of the sales of the property by him devised to be sold, and the rents and profits of the real estate, as directed by the last will and testament of the said Jacob Gibson, to be applied towards the payment of his debts, would have been amply sufficient to discharge the same, and all expenses of administration, had the administration thereof been conducted according to the intentions of the said Jacob Gibson as expressed in his said will: but these defendants allege and say, that the said personal estate of the said Jacob Gibson, or the greater part thereof, was retained and not sold till nearly two years after his death, and thereby