

the personal estate, the choice of the creditors shall not determine whether the legatees shall be paid or not. So that wherever there

ment, in some way, of such a proportion of the whole debt so chargeable upon the whole of the deceased's real estate, exclusive of the mortgaged estate, actually applied to the satisfaction of the mortgage debt, as the value of their interest therein bears to the value of the whole real estate of the deceased at the time of his death, when their interests vested: and to which time their protective pleas relate.—*Long v. Short*, 1 P. Will. 403, note; *Craig v. Baker*, 2 Bland, 238, note.—James Tilton's life interest to have a value set upon it as of that date by the Chancellor, as usual, on proof of his then age, health, &c. This proportional deduction, unlike a claim for contribution, is an immediate and preliminary right according to which the claim of the creditor must be cut down before any others, who may be liable, can be called upon to pay the sum thus ascertained to be due.

In regard to all creditors, other than those herein before spoken of, it must also be recollected, that the Statute of Limitations, in general, enures only to the benefit of him who pleads it; that no creditor, who has a prior right of satisfaction, or has failed to sustain his claim, or whose claim has been, in any way, wholly barred; and who, consequently, has no interest to benefit or protect by a plea of limitations, can have any standing in this Court to direct such a plea against, or to the prejudice of any one else.—*Lingan v. Henderson*, 1 Bland, 276.—That as the personal estate is primarily liable, a well sustained plea of the Statute of Limitations, by an executor or administrator, against the claim of any creditor must necessarily enure to the benefit of the heirs; and, so too, a complete bar of any kind as against the personalty must, to the same extent, be allowed to operate as a bar for the protection of the realty.—*Tessier v. Wyse*, ante, 28; *S. C.* 4 G. & J. 296.—But although the executor or administrator may not have pleaded the Statute of Limitations; or may have failed to establish such a plea when relied on, nevertheless such a plea may be made available by the heirs to cover the realty, a judgment even, against an executor or administrator, being no authentication whatever against the heirs.—*Duwall v. Green*, 4 H. & J. 270; *Putnam v. Bates*, 3 Cond. Cha. Rep. 355; *Dorsey v. Hammond*, 1 Bland, 470.—That as a plea of the Statute of Limitations by one of several heirs enures to his benefit only, such a sustained plea by an heir operates as a bar of only such a proportion of the creditor's claim as the whole of it bears to that of such heir's interest in the whole real estate; that of the several pleas of limitations, relied on by the several creditors, that which has been first pleaded and filed must be first applied and have an operation to the exclusion of any subsequent plea of limitations against the claim of him whose first pleads: but where pleas of the Statute of Limitations have been filed by different creditors on the same day, so as to have a countervailing operation against each other, all such pleas must be rejected so far as they so operate; that no plea of the Statute of Limitations can be of any avail against a claim stated in the bill and expressly or tacitly allowed by the decree, unless upon the ground of some specified fraud.—*Strike's Case*, 1 Bland, 68; *Williamson v. Wilson*, 1 Bland, 441; *Welch v. Stewart*, 2 Bland, 38; *Hammond v. Hammond*, 2 Bland, 359. That no plea of the Statute of Limitations can be allowed against any claim not then filed or put upon the record; that a plea of the Statute of Limitations against a claim may be put in at any time after its voucher has been filed; provided he who so pleads has not done any act which necessarily implies a waiver of a reliance on such plea.—*Welch v. Stewart*, 2 Bland, 41.