ROBERT J. YOUNG AND WIFE,
vs.
LOUIS MACKALL, JR., ET AL.

DECEMBER TERM, 1850.

[LIMITATIONS—PROOF OF CLAIMS—CHANCERY PRACTICE—TRUSTS.]

AN express promise to pay the debt will not revive the remedy, upon a bond barred by the statute; though upon such promise suit may be maintained, and the bond, though over twelve years standing, may be offered in evidence, as the inducement to, or consideration of, the promise.

When a claim is founded upon a lost instrument, evidence of the loss must be first offered, and then a copy, or parol evidence of its contents, may be used: the existence of the original must be first proved before a copy is admissible.

A judgment was rendered for the penalty of the bond sued upon, to be released upon payment of such sum, as certain persons named should say was due. HELD—That this was a final, and not an interlocutory judgment, and could be set up as a claim against the estate of the defendant, though the referees did not ascertain the sum due until after his death.

The judgment was final, and to make it absolute, no further action of the Court was necessary: the filing of the certificate of the referees was all that was required for the purpose.

Where proof is taken, under an order of Court, and the notice was, that depositions would be taken on a certain day at a certain place, and they do not appear upon their face to have been taken at the *place* designated, they are not admissible in evidence.

A claim was set up against the proceeds of the real estate of a deceased person, sold for the purpose of partition amongst his heirs-at-law, founded upon two single bills executed by the deceased, and which, at the time of their filing, were barred by limitations. To remove this bar, a bill in equity by the executor of the obligee, and the answer of the deceased admitting the existence of the single bills, and expressing his willingness to settle upon certain conditions, filed more than nine years before the filing of this claim, were offered in evidence. HELD—That this was not sufficient to remove the bar of the statute, pleaded by one of the heirs-at-law of the deceased.

The action upon a promise to pay a debt, which is barred by the statute, must be in *assumpsit;* and to such an action, three years is a bar.

Trusts, which are not affected by the statute of limitations, are those technical and continuing trusts, which are not cognizable at law, but fall within the proper, peculiar, and exclusive jurisdiction of Courts of Equity.

But where the jurisdiction is concurrent, and the party is at liberty to pro-