

found something in the record to rescue them from the operation of the plea.

It appears that on the 26th of August, 1839, Joseph W. Reynolds, as executor of Anne Mackall, filed his bill in this Court against the said Thomas Mackall, charging, among other things, that these two sealed notes had, upon the death of the said Anne, come into the possession of the said Thomas, which he had retained and converted to his own use, and praying for a discovery, and an account, and for general relief. Thomas Mackall answered this bill on the 26th of February, 1840, in which he admits his being in possession of the notes referred to, explains the manner in which he acquired the possession, and exhibiting copies of the notes, offers to deliver them up to the complainant, Reynolds, upon his settling with him for his distributive share, as a legatee under the will of the said Anne Mackall, who was his sister. No further proceedings appear to have been had in that case, which abated by the death of the complainant, Reynolds, in 1842; and the question now is, whether the answer of Thomas Mackall to this bill precludes Louis Mackall, Junior, claiming, as one of the heirs-at-law of said Thomas, from relying upon the plea of limitations in the case now under consideration?

The question is not whether, if the suit instituted by Reynolds had been revived and carried on, Mackall's representatives would have been permitted to put in the plea of limitations after he had in his answer, upon the terms therein mentioned, offered to surrender the two notes, and come to an adjustment, but whether, in this case, which is a proceeding to sell the real estate of Thomas Mackall, for the purpose of making partition among his heirs-at-law, one of those heirs may not defend his proportion of the proceeds of the estate against this claim, by interposing the plea?

The bill filed by Reynolds, and the bill in this case, are entirely distinct proceedings, having no sort of relation to, or connection the one with the other. And the bill, and the answer in the former case, can only be used as evidence in this. It cannot be used as an estoppel here, however it might operate