

Upon this general rule, that the shewing in any way whatever, that the alleged cause of action never existed, or that it had been extinguished, furnishes a complete answer to all claim to relief, it has been settled, that if an obligee, by his will, makes one of the obligors his executor, and dies, the action at law is thereby discharged as against all; because there being at law but one duty, extending to all the obligors, the discharge, or suspension of the action as to one, extinguishes it as to all.(d) And although in equity, and by the act of Assembly, the debt due from such executor is to be considered as assets in his hands. yet the principles of law have not been altered in any other respect whatever.(e) If there be several executors they may plead different pleas; each of them may put in, for himself, none other than the plea of *plene administravit*; and as such a defence does not controvert the existence of the cause of action, but merely denies a sufficiency of assets wherewith to satisfy it; if the one of such pleas should be found for and the other against him who pleads it, yet the plaintiff may have relief against that one executor, although his suit must be dismissed as against the other.(f) But if, in addition to such a plea, one of the executors should plead a release, or rest his defence upon any matter going to the whole cause of action, and it should be found for him, the plaintiff must be barred, and can have no relief whatever; although the other executor had even acknowledged the action, or made default; because it would appear upon the whole record, that the plaintiff had in fact no cause of action.(g)

The wife, executrix to her husband, married a second husband. A bill is exhibited against them to discover the trust; the husband and wife disagree in the matter, and put in severally their answers; the husband denied the trust, but the wife confessed it. The cause proceeded to hearing, and the plaintiff proved the trust only by one witness, which the plaintiff insisted on with the wife's confession, to be sufficient; the matter being but in that wherein she was concerned as executrix. But the bill was dismissed, *quia* the wife's answer shall not bind the husband.(h) But upon a bill brought against husband and wife for lands held by them in her right, the husband having made default, the wife got an order to answer separately; and thereupon answered, setting forth a title to herself

---

(d) *Cheetham v. Ward*, 1 Bos. & Pul. 630; 2 Will. Ex'rs. 812.—(e) *Berry v. Usher*, 11 Ves. 87; *Simmons v. Gutteridge*, 13 Ves. 264; 1798, ch. 101, subch. 8, s. 20.—(f) 2 Will. Ex'rs. 1218.—(g) *Elwell v. Quash*, 1 Stra. 20; 3 Bac. Abr. 33; 2 Will. Ex'rs. 1193.—(h) *Anonymous*, 2 Ca. Cha. 39.