

wards she made her will, thereby giving several specific legacies, and made A and B executors; on her death her husband possessed himself of moneys which she left, to the amount of £24; after which the obligee in the bond brought a bill against the executors and the husband; and one of the executors confessed assets; but the husband insisted upon the statute of limitations.

*Master of the Rolls.* It is true, that the bond given by the *feme covert* is merely void, and in that respect differs from a bond given by an infant, which is only voidable. It is likewise true, that the defendant, insisting upon the benefit of the statute of limitations by way of answer, shall, at the hearing, have the like benefit of the statute as if he had pleaded it. But in this case, all the separate estate of the *feme covert* was a trust estate for payment of debts, and a trust is not within the statute of limitations. From whence it seems as if the plaintiff ought to be at liberty to prosecute all the defendants, in order to be paid out of the separate estate left by the *feme covert*, to which purpose such part of the separate estate, as is undisposed of by the will, ought to be first applied. In the next place, if that be not sufficient, the creditors are to be paid out of any money-legacies given by the *feme covert*; and lastly, supposing there is still a deficiency, all the specific legatees ought to contribute in proportion. Neither can it be material, so as to excuse the other defendants, that one of the executors of the *feme covert* has admitted assets; for he might admit assets, and yet have none, nor any estate of his own. And it would not be reasonable, that this should prevent the plaintiff, the creditor, from prosecuting the other executor, or the husband, who may have possessed themselves of part of the separate estate, and ought to be responsible. For which reason, let all the executors account for what they respectively have in their hands of the *feme covert's* personal estate, or the produce thereof, and let the same be liable in the order aforesaid, reserving costs. (k)

From this case two points, in relation to the matter under consideration, seem to have been treated as settled: *first*, that a plea of, or a reliance in answer upon the statute of limitations by one defendant alone, if sustained, would be a sufficient bar of the whole, although the claim should be admitted by all the other defendants; and *secondly*, that the confession of assets by one executor, without actual satisfaction, is no bar to a recovery against

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(k) Norton v. Turvill, 2 P. Will. 144.