to the plaintiff's claim. And so far as these or any other allegations of any of these defendants may be understood to rely upon the fact, as stated by the defendant *John M. Wyse*, that the plaintiff *Tessier* received the bond in full satisfaction of his claim against the estate of the deceased, it is met, and so totally disproved by the testimony, that there is not left even a plausible pretext for any such defiance to rest upon. But, it would seem to be intimated, by these allegations; and, perhaps, it was intended to be relied on as a defence, that, as the plaintiff *Tessier* might have obtained satisfaction from the personal estate of the deceased, he has now, by his negligence and misconduct, lost his right to have recourse to the deceased's real estate.

The nature of the negligence and misconduct of the plaintiff *Tessier*, thus relied on as a bar to his claim, have not been distinctly described; but, from all the circumstances of the case, it is evident, that none can be imputed to him, other than that of having failed to exert more active diligence for the recovery of his claim, either against the personal representatives, or the heirs of his deceased debtor, or both of them.

But a creditor is, under no circumstances, bound, in behalf of his principal debtor, to use any degree of active diligence. Considering the debt as an incumbrance, or as an inconvenience in any way, it is in the power of the debtor at pleasure, to remove it by making payment according to the terms of his own stipulation. If the creditor should remain inactive so long as to afford a legal presumption, that the debt had, in truth, never existed, or had been paid, the debtor may protect himself by relying on the statute of limitations, or the lapse of time as conclusive evidence in support of such presumption in bar of the plaintiff's claim. Apart from the statute of limitations, or lapse of time as a bar, upon which none of these defendants have relied, no debtor is ever permitted to complain of the mere inactivity of his creditor. And, unless in cases where a creditor can be charged as a trustee, guilty of a breach of trust in not claiming, his merely neglecting to sue can never be imputed to him as a wilful default, or as injurious conduct towards any one. (*a*)

Here the debtor is dead, and the claim is made against his personal representative, and his heirs in respect of the personal and

(*a*) Heath *v.* Percival, 1 P. Will. 683; Powell *v.* Evans, 5 Ves. 839; Wright *v.* Simpon, 6 Ves. 726; Tebbs *v.* Carpenter, 1 Mad. Rep. 290.