

having obtained a decree for a sale of the realty founded on an admission of the truth of that allegation, they cannot now have a decree over, against the administrator, for any balance of their claims, that may remain unsatisfied; or take any other advantage of the absolute nature of those judgments which they have thus abandoned; or be regarded in any other way than as standing among those general creditors whose claims are not barred by the statute of limitations. (z)

In England and here, formerly, it was necessary, in the administration of a deceased debtor's estate, to attend to the distinction between debts due by specialty and those due by simple contract; because, according to the order in which the law directed the debts of the deceased to be paid, those due by specialty were to be first paid; and where the assets were insufficient to pay all, and the executor or administrator, in violation of this rule, paid them away in satisfaction of simple contract debts, he thereby made himself liable for the remaining unsatisfied specialty debts. (a) Where, however, the assets were sufficient to pay all, a simple contract debt might be safely paid, at any time, without regard to this precedence in favour of specialty debts. (b) But by our acts of Assembly, prescribing the order in which the debts of the deceased shall be paid from the personal assets; (c) and, on a deficiency thereof, from his real assets; (d) the distinction between debts due by simple contract and by specialty has been, in this respect, abolished; and, therefore, there can be no occasion to advert to it for any such purpose. It should, nevertheless, be attended to in all cases where the debtor has, by deed, bound his *heirs* as well as himself for the payment of the debt, as, in such cases, the creditor thereby has it in his power to sue and recover, at common law, from the heir alone, merely in respect of such assets descended, which the creditor cannot do upon any simple contract, or even specialty, where by the *heir* has not been expressly bound. (e)

But it still continues to be important, here as in England, in reference to the statute of limitations, to look to the distinction between specialty and simple contract debts; because of the different limitations prescribed as an allowable bar to each. (f) A creditor

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(z) Sheppard v. Kent, 2 Vern. 435.—(a) Pinchon's case, 9 Co. 88; Dep. Com. Gui. 125.—(b) Turner v. Turner, 1 Jac. & W. 39.—(c) 1798, ch. 101, sub ch. 8, s. 17.—(d) 1785, ch. 80, s. 7.—(e) Hammond v. Hammond, 2 Bland, 325.—(f) 1715, ch. 23, s. 2 and 6.