

One judgment may be set off against another.

The debt to be set off must be a subsisting legal debt, and not one, the remedy for which is barred by the Statute of Limitations, or one which is satisfied by the discharge of the debtor out of custody. (a)

The debt must have been due at the commencement of the action, and must remain due at the time of trial.

A bill, or note for example, to be set off, must have been due and unpaid in the defendant's hands when the action was commenced, and must remain in his hands at the trial. (b)

The debts must be mutual—that is, they must be due to the defendant or defendants alone, from the plaintiff or plaintiffs alone.

But it is not meant that the defendant must be unable to sue any one else than the plaintiff; for on a bill for instance, there might be several others who could be sued. Defendant may set off a sum due on plaintiff's *joint and several* note against plaintiff's demand.

For example, if A and B sue D, D can set off a debt due to him from A and B, but not one due to him from A alone, or one due from A, B and C.

So also if the debt were due from A and B, not to D alone, but to D and E, then the debt could not be set off by D.

But the debts and credits of a firm are vested at law in the surviving partner, who is then in the same position as regards set off as if the other parties had never existed.

For example, in the above case, suppose D and E were partners, and E were dead, D, though the sole defendant, and sued for his private debt, might set off a sum due by A and B, the plaintiff's, to the firm of D and E.

(a) Byles on Bills, 9th Ed., 352; *Jacques v. Withy*, 1 T. R. 557.

(b) *Richards v. James*, 2 Exch. 471; *Evans v. Prowser*, 3 T. R. 126; *Eyton v. Littledale*, 4 Exch. 159.