

decree or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as by statute are payable in like order of administration as simple contract debts—shall be paid *pari passu* and without any preference or priority of debt of one rank or nature over those of another; but nothing herein contained shall prejudice any lien existing during the lifetime of the debtor, on any of his real or personal estate.

PRIORITY.—Under the English statute a creditor obtaining judgment against an executor before any decree is made for administration is entitled to priority over creditors whose claims are not in judgment. *Re Williams L. R. 15 Eq. 270; Re Stubbs, 8 Ch. Div. 154.*

In Ontario, if a creditor recover judgment against an executor and obtain payment in full, he will, in case of deficiency of assets, have to account to the other creditors to the extent to which he has received more than his *pro rata* share of the estate. *Bank of B. N. A. v. Mallory, 17 Gr. 102.*

PREFERENCE.—Under the English statute an executor may, at any time prior to a decree for administration or the appointment of a receiver, prefer any one or more creditors to the others. *Re Radcliffe, 7 Ch. Div. 753; Snell's Equity, 263-4; May on Fraudulent Conveyances, 89.*

In Ontario, preference would amount to a *devastavit*. *Bank of B. N. A. v. Mallory, ante; Willis v. Willis, 20 Gr. at p. 400.*

RETAINER.—Under the English Act, the right of retainer by an executor has not been abolished, nor has it been enlarged so as to enable an executor to retain his debt as against a creditor of higher degree than himself. An executor, therefore, who is only a simple contract creditor of his testator, cannot retain his debt as against a specialty creditor. In such a case the effect of the statute is somewhat curious. The assets must be apportioned on the footing of giving an equal dividend to all the creditors—specialty as well as simple contract creditors; the dividend must then be paid in full to the specialty creditors; the executor then retains