

so as to leave the other fund for their satisfaction. The principle upon which this arrangement is made is not deduced from that

days notice as usual; provided, that such testimony be taken and filed in the Chancery office within four months after the day of the said sale.

From this decree some of the defendants appealed, and the case having been brought before the Court of Appeals, the decree of the Chancellor was modified as set forth in 10 G. & J. 100.

Under this decree of the Court of Appeals the case having been returned to the Court of Chancery, the auditor on the 8th of May, 1840, reported, that he had examined the proceedings, and from them stated all the claims exhibited against the estate of Jacob Gibson, deceased; also an account marked A, between the personal estate of this deceased, and the executor thereof; and also an account marked B, between the real estate of this deceased and the trustee for the sale thereof; with sundry statements marked No. 1, 2, 3, 4 and 5; all herewith filed. That in account A, the amount of the personal estate, and the proceeds of the real estate as directed by the will to be applied to the payment of debts, according to the administration account passed by the Orphans' Court of Talbot County, is applied to the payment of the commissions and expenses and preference claims, as stated in said Orphans' Court account; and the net balance proportionally distributed among all the paid and unpaid creditors of the deceased, who were not entitled to be preferred in the disposition thereof, whereby it appears, that these unpreferred creditors should have received as of the day of passing said Orphans' Court accounts, \$0.61106 per centum of the amount of their claims. That in account B, the proceeds of the sale of the real estate are applied to the payment of the trustee's allowance for commission and expenses; and the costs of suit of the complainant and appellant in the first appeal, and of the appellees in the second appeal; for taxes due upon the estate sold; then to the satisfaction of the mortgage debt due to the defendant the Farmers Bank, and the balance left unappropriated, because of its inconsiderable amount, and the many difficulties now attending a distribution thereof among the other creditors of the deceased.

The auditor further says, that claims No. 3, 4, 5 and 8, are not proved as the Act of Assembly requires: that the original causes of action are wanting to support claims No. 3, 4 and 5; that all the devisees of the deceased plead the Statute of Limitations to claims No. 2 and 7; that James Tilton and Clara Tilton, and the heirs of Harriet Bennett plead this statute to claims No. 3 and 8; that Reynolds and wife plead this statute to claims No. 2, 3, 4, 5, 7, 8, 9 and 10. The auditor submits to which of these claims the statute applies; and that these claims, viz: No. 2, 3, 4, 5, 7, 8, 9 and 10, in the mean time be suspended. He further reports, that claim No. 10 appears to be a judgment recovered by the claimant of No. 7, against James Tilton, as the surety for the same debt as No. 7; and the auditor submits how far this judgment supports claim No. 7, as against any interest said Tilton may have in this estate. That the tax bills are not proved; nor have they been sanctioned by the trustee; it is therefore, submitted, that they be suspended. He also reports, that many of the devisees, as well as the defendant, the Farmers Bank, require, that the claims should be fully proved; and that claims No. 2, 3, 4, 5, 7, 8 and 9 are not fully proved.

The auditor further reports, that he has assigned so much of the balance of the proceeds of sale to the satisfaction of the mortgage debt of the defendant, the Farmers Bank; because the whole sales were of the mortgaged