

shall not depend upon the will or caprice of one creditor who has within his reach a double fund to disappoint another creditor of his

the bank released Lloyd's part of Marengo, on condition that the proceeds thereof, as bought by Lloyd, should be applied to the payment of the debts of Jacob Gibson, deceased, which proceeds were accordingly, without objection by the parties, so applied, so that the release of the bank, though its operation was to diminish the fund liable for the payment of the mortgage debt; yet, as the value of this released mortgaged estate was applied to the payment of the other debts due by the deceased, to the exoneration of the real estate of the other devisees of the testator therefrom, it would seem, these other devisees cannot now object to this release, unless they permit the bank and Lloyd to claim, by way of substitution to the rights of the creditors so paid off by the terms of the release. This would increase the amount to which the bank would be entitled, by way of substitution, and render it still more improbable, that any injury could result to these parties by paying off the whole of its mortgage debt.

The auditor further reports, that there is not now, in this cause, sufficient evidence from which he can accurately ascertain what should be the deduction from the plaintiff's claim, No. 1, by reason of the successful plea of the Statute of Limitations thereto by James Tilton and Clara Tilton; and he submits, that further proof be taken for that purpose. He also reports, that James Tilton was one of the sureties of Edward R. Gibson on his bond as executor of the deceased; and, in order to the indemnity of himself and his co-surety, Edward R. Gibson, conveyed by mortgage to them all his real estate devised to him by the deceased, prior to any of the conveyances thereof now among the papers. That claimants of No. 1, 3, 4, 5 and 7, have recovered judgments against this executor for their legal dividends of the assets of the deceased respectively, but have not received the same. That the personal estate of the deceased appears to have been long since fully paid off; the said Edward R. Gibson and James Tilton are both non-residents of this State. The auditor submits, therefore, if under these circumstances, the interest of said Tilton in this estate should not be held liable for the payment of the legal dividends of the personalty on these judgments, and also, how far these creditors can avail themselves of this mortgage; and of their judgments to prevent the operation of the Statute of Limitations, as pleaded against them by the said Edward R. Gibson and James Tilton; those claiming under them, or of the mortgaged premises, as a security for the payment of their debts.

The auditor further reports, that the claimant No. 9, alleges, in his petition, among other matters, that he has a right to be reimbursed the amount of his said claim, as well out of the estate of the deceased, as out of any interest Edward R. Gibson or James Tilton may have therein, to all of whom he claims to stand in the relation of surety; that he claims to stand in the relation of co-surety to Fayette Gibson; and having paid, on account of the principal debtor, the amount of this claim, that he is entitled to be reimbursed one-half thereof out of any interest Fayette may have in the estate. He alleges, that Edward R. Gibson and James Tilton are non-residents, and that there is no other fund from which he can obtain payment. The auditor submits the effect of their several protections upon the respective interests of the parties.

And the auditor further reports, that since the preparation of these accounts and report, Francis G. Sheets and Clara his wife, formerly Clara Tilton, have filed their plea of the Statute of Limitations, and objected to