

the death of the debtor. *Lacam v. Mertins*, 1 Ves. 312; *Aguilar v. Aguilar*, 5 Mad. 414. A mere bounty of the testator enables the

tion of the estate, as it ought, of all and every part before justice can be done to the heirs, the complainant, the bank, or other creditors. 8th. That the whole purchase money of the property sold, after deducting costs, and the trustee's expenses, are applied to the bank mortgage debt, whereas it may happen, that the part sold is not sufficient for the payment of the mortgage, and that portion of the general debts which may be thrown upon it; and that such an appropriation ought not to be made, because of the right to substitution, as stated by the auditor; for the reason that these defendants object to the claim of the bank, and plead limitations thereto, whenever made on the ground of substitution, or otherwise than under the mortgage upon the mortgage property. 9th. That there is no proof of the validity of the debts mentioned in account A, and the auditor erred in assuming them to reach such an amount as to reduce the personal estate to \$0,61106 in the dollar; or any other part of a dollar, less than the whole. 10th. That statements 3, 4 and 5, are erroneous, because the whole of Marengo ought to be estimated, and its value ascertained, and the excess of value over and above the payment of the mortgage, ought to be applied to the payment of the general debts like the rest of the property of the deceased; and not otherwise, so far as these defendants are concerned.

On the same day the heirs of John W. Blake excepted to the auditor's report, because no account has been returned allowing in their favor, and as a deduction from that portion of the debts which the property sold to their father ought to pay \$5,000, relied upon by the answer of the said Blake, as being a part of the purchase money paid to this bank, in liquidation of a just debt due by the estate.

On the petition of the heirs of Harriet Bennett the parties were authorized to take testimony before any Justice of the Peace in relation to the facts presented by the auditor's report. And some time after the case was again brought before the Court.

BLAND, C., 7th December, 1840.—This case standing ready for hearing on the auditor's report, filed on the 8th of May last, and having been submitted on notes by the solicitors of the parties, the proceedings were read and considered.

It must be recollected, that, according to the decree of the Court of Appeals, no sale is to be made of that part of the real estate to which the defendant Clara Tilton is entitled, and that the rights of the defendants James Tilton and Rebecca Gibson, are to be expressly reserved. The effect of which being to close the suit as to them, and to prevent any funds of theirs from being brought into Court, there can be claim made by any one, either as creditor or surety, against the interests of all or of any one of them; nor can they, or either of them, whose interests in the subject in controversy have been so finally and conclusively protected, have any standing here to plead the Statute of Limitations against any one else. Subject to the rights, thus declared, of these three defendants, the claims of the plaintiff McCormick, and the defendant the bank, having been finally established, by the decree of the Court of Appeals, they cannot be affected by any plea of limitations which may have been since directed against them by any other creditor or party. The mortgage debt due to the bank must be first satisfied out of the proceeds of the sale of the mortgaged estate, leaving the surplus, if any, to be charged as a portion of the property of the devisee to whom