

is a double fund, though this Court will not restrain a party, yet he shall not so operate his payment as to disappoint another claim,

That all directions by a party or creditor to the auditor, or exceptions to his report which, in substance, rely upon the Statute of Limitations as a bar to any claim then filed, other than those of the plaintiffs, are to be considered as sufficiently formal pleas to that effect, subject to the before mentioned rules.—*Strike's Case*, 1 Bland, 93; *Norwood v. Norwood*, 2 Bland, 481, note. And that the Statute of Limitations runs up to the time of filing the voucher of the creditor's claim.—*Welch v. Stewart*, 2 Bland, 41.—But if it does not appear, or is not shewn when the voucher was filed, it cannot be taken to have been filed before the day on which it appears to have been first stated by the auditor, or the day of filing the plea in which it is first noticed.

In order to give full effect to the right of substitution to which any creditors, so far as they may not have a right of preference in virtue of any lien, may be entitled, the proceeds of the sale of the real estate must be so distributed as not to award any thing to a creditor who has received any payment from the personal estate until all the other creditors have received an equal proportion of satisfaction from the realty.—*Hammond v. Hammond*, 2 Bland, 384; *Wilson v. Paul*, 11 Cond. Cha. Rep. 320; *Mitchelson v. Piper*, 11 Cond. Cha. Rep. 321.—For which purpose a statement must be made shewing how the personal estate of the deceased has been disbursed among his creditors; and the amount of the debts paid by those who the Court of Appeals have declared have a right to be substituted in the place of such creditors of the deceased. Nothing, however, can be returned to any one of these defendants as devisees of the deceased, as the surplus of the proceeds of the sale of the real estate devised to him, until he has made good, from such surplus, all that for which he may be in any way liable to the estate of the deceased, or to any one or more of the other devisees.

All these directions must be controlled by, taken and construed in conformity to the opinions, directions and decrees of the Court of Appeals. And the said report of the auditor, and the exceptions thereto, so far as the same may be at variance with these directions, are hereby overruled.

Whereupon it is Ordered, that this case be and the same is hereby referred to the auditor, with directions to state an account or accounts accordingly, from the pleadings and proofs now in the case, and from such other proofs as may be laid before him; from which he will exclude all claims not then sufficiently authenticated; and also all others not then fully proved, where full proof has been required by any one competent to plead the Statute of Limitations, and also to require full proof for the protection of his own interests.—*Dorsey v. Hammond*, 1 Bland, 471.—And the parties are hereby authorized to take testimony in relation to the said account before any Justice of the Peace, on giving three days notice as usual: Provided, that the said testimony be taken and filed in the Chancery office in this case, on or before the twentieth day of February next.

The time allowed by this order for the taking and returning of testimony was extended to the sixth of March following; under which some further proofs were taken and returned accordingly.

After which the auditor by his report dated on the 8th and filed on the 9th of March, 1841, says, that in obedience to the order of the 7th of December, 1840, he had examined the proceedings in this cause and arrived at the following conclusions:

The amount of proceeds of sales made by the trustee on the 27th of March, 1839, appears, from the auditor's report filed on the 8th of May, 1840, to