

whether arising by the law, or by the act of the testator. *Powel Mortg*, 890; 1 *Mad. Cha. Pra.* 250, 616; *Aldrich v. Cooper*, 8 *Ves.* 388.

have been \$15,637.36; from which deduct the commissions and expenses of the trustee as shewn by the same report \$728.47; and costs of suit in this Court and the Court of Appeals, \$879.17; and additional costs now due \$110.57; and there remains the net sum of \$13,919.15, to be appropriated according to the principles heretofore established in this cause. The mortgage debt of the Farmers Bank of Maryland, with interest to the day of sale, as per the same report, and covering all the property sold amounts to the sum of \$13,739.55. And, if the net proceeds of sale are to be applied to its payment, there would remain for distribution amongst the general creditors only the sum of \$179.60.

The auditor finds, that all the claims filed against the estate; except that of the complainant, are barred by the Statute of Limitations, which has been pleaded by all the parties whose interests would be affected by them.

The mortgage of the Farmers Bank covers the whole of that part of the estate of the deceased, known as Marengo, which was devised to Fayette Gibson, to Edward Gibson, and to Frances Gibson, now Frances Tilton, wife of James Tilton. Before the institution of these proceedings, Fayette Gibson had sold his portion thereof to Edward Lloyd, one of the defendants, with the consent of the bank; and it had been held not to be answerable for any part of the mortgage debt. The Court of Appeals have further said, in reference to the position in which the bank has been placed by their consent to the proceedings of Fayette Gibson, that if it should turn out, that the residue of that part of Marengo, devised to Fayette Gibson, and by him conveyed to Edward Lloyd or John W. Blake, united with the other parts of Marengo, to which Fayette Gibson was entitled, after paying their just contribution towards the mortgage debt, and all other debts of the deceased, should prove inadequate to the payment of that portion of the mortgage, which the part of Marengo devised to Fayette Gibson was bound to contribute, then in reference to the other devisees, owners of Marengo, the mortgage debt of the bank must be deemed satisfied and paid to the extent of such inadequacy. Hence it becomes necessary before determining how much of the fund in hand ought to be applied to the payment of the mortgage debt of the bank, to ascertain what part of it, the land sold to Lloyd would have been made to contribute if now liable. And as Edward Gibson's devise, which is the part of Marengo alluded to in the opinion of the Court of Appeals, as the part to which Fayette Gibson is now entitled, is answerable for its proper proportion of the general debts, its liability, in this respect also, must be established before making a distribution of the proceeds of sale.

But no part of the estate of the deceased has been sold; except those parts of Marengo which were devised to Edward Gibson and Frances Gibson, now Mrs. Tilton; and the only mode of ascertaining the liability of any one share of the estate is to make an apportionment of the outstanding claims against all the devisees who will be eventually answerable therefor, according to the most accurate valuation that can be obtained. For the purpose of affixing a proper valuation upon the several pieces of property devised by the deceased, the auditor has relied on the testimony taken under an order of Court of the 14th of September last; and as he is required, for the purpose of giving proper effect to the plea of limitations set up by James Tilton, for his life interest, and Clara Tilton, for her part of the estate as allowed