

creditor's contract. It can only be made where all the parties are before the Court, and the whole subject is within its jurisdiction;

\$2,500.00, deduct dividend of personal estate, \$1,994.93; we find his claim as of this date to be \$505.07; of which Edward Gibson's devise ought to have paid \$96.22; Fayette Gibson's devise, sold to Lloyd, \$30.23; Mrs. Tilton's, \$34.91; Mrs. Reynold's, \$96.04; Mrs. Bennett's, \$80.83; Fayette Gibson's, sold to John W. Blake, \$108.27; and Clara Tilton's, \$58.58. A proper reduction of the complainant's claim may now be made on account of the plea of limitations put in by James Tilton and Clara Tilton. The whole claim of complainant properly chargeable on the real estate as above \$505.07; deduct Clara Tilton's portion thereof \$58.58; and six-fifteenths for James Tilton's life interest, \$15.96; leaves \$432.53, due to the complainant.

As the Court of Appeals have said, that the complainant is entitled to substitution in the place of creditors who, to his exclusion, were paid out of the personal estate; except against Bennett's and Blake's heirs, it may be seen by the following statement what is the amount as against the latter, as well as all the rest of the devisees.

His claim properly chargeable against the real estate on the 21st of March, deducting loss by the plea of limitations, as above, \$432.53. Interest from the 21st March, 1818, to the 27th of March, 1839, \$545.42; shewing as the basis of apportionment the sum of \$977.95, against Bennett's and Blake's heirs. The sum to be apportioned as against the rest will be found by adding dividend of personal estate, \$1,994.93, with interest thereon from 21st March, 1818, to the 18th December following, \$88.77; amounting to \$2,083.70. Then paid by the executors, \$600.00; leaving a balance of \$1,483.70; interest on which from the 18th December, 1818, to the 27th March, 1839, \$1,804.92, amounting to \$3,288.62, which added to the sum shewn as the basis of apportionment, amounts to \$4,266.57. But the complainant's claim as now recoverable amounts to the sum of \$3,446.75; of which Edward Gibson's devise would pay \$1,266.06; Fayette Gibson's sold to Lloyd, \$397.79; Mrs. Tilton's deducting six-fifteenths for James Tilton's life interest, \$275.42; Mrs. Reynolds', \$1,263.70; and Bennett's heirs, \$243.78. If we add to this amount the loss by not allowing the complainant the benefit of substitution against Bennett's heirs, his whole claim as shewn; viz: as above, \$3,446.75; loss, \$819.82, the whole claim will be as above, \$4,266.57.

In the above apportionment the auditor has not included the devise to Fayette Gibson which was sold to John W. Blake, because it appears from the testimony, that after the sale of that portion to him, he paid debts of the estate to the amount of \$5,855.56; which is larger than the whole of the complainant's claim, even without allowing interest on the payment to the day of sale, to bring the payment to an equality with it.

Having now ascertained what portion of the general debts are properly chargeable upon Fayette Gibson's portion of Marengo, sold to Lloyd, as well as upon Edward Gibson's portion, now owned by Fayette Gibson, it will be seen, that the contingency has happened which was contemplated and provided for by the Court of Appeals. Edward Gibson's part of Marengo sold for \$10,500.00; to pay its portion of costs, \$291.25; commissions, \$534.55; mortgage debt, \$7,730.09; McCormick's claim, \$1,266.06; to pay Lloyd's portion of the mortgage debt, \$3,205.29; of costs, \$120.77; and of McCormick's claim, \$397.79; amounting altogether to \$13,045.80. Loss to the bank of \$3,045.80.

But the auditor finds from the testimony, that Lloyd, after his purchase, paid a large sum for debts due by the estate, amounting to the sum of