

peril. For if the parties have not been all brought before the Court; or if they cannot be brought before it; because of their not having any such privity of interest as will warrant the making of

sold, three-twelfths, \$584.30. To the complainant for his proper proportion of Mrs. Tilton's equity, \$275.42. To ditto, for his proper proportion of Edward Gibson's devise, \$1,266.06. To ditto, for proper proportion of Fayette Gibson's devise, sold to Lloyd, \$397.79, and to ditto, for balance of Mrs. Tilton's equity, \$525.76. Being equivalent to the before mentioned whole amount of sales, \$15,637.36.

By the foregoing account the complainant would receive out of the funds in hand on his claim, the sum of \$2,465.03; his whole claim as recoverable amounts to \$3,446.75; leaving still to be provided for, the sum of \$981.72; of which Mrs. Reynold's devise ought to pay \$822.96; and Mrs. Bennett's, \$158.76.

Mrs. Tilton's devise sold for \$5,137.36; deduct proportion of mortgage debt, \$2,804.17; proportion of costs, commissions, &c. \$299.57; leaving a balance due her of \$1,173.90. Of which she repaid to the bank, \$176.07; leaving to be repaid to her by Reynolds and wife, \$440.74; and for costs, \$159.01; making \$599.75; by Bennett's heirs, \$85.02; and for costs, \$133.83, making \$218.85; and by Blake's heirs for costs, \$179.23.

The following will shew the situation of the estate after the distribution of the proceeds according to the former account. Debtor—The estate to the bank, \$1,260.59—to complainant, \$981.72—to Mrs. Tilton, \$997.83; making \$3,240.14. Credit—Due by Reynolds and wife, \$2,230.60; by Bennett's heirs, \$533.47; by Lloyd for costs, \$120.77; by Blake's heirs for costs, \$179.23; paid by Mrs. Tilton to the bank, \$176.07; amounting as above to \$3,240.14.

If these views be correct the bank would lose the sum of \$1,785.21; but as there would have been no loss if the mortgaged property had been properly applied, the bank can come upon the estate only as a general creditor for this balance; either in its own right, or by substitution; and it is conceived, that for the amount which is claimed as a general creditor, the plea of limitations, as set up by the devisees, would be sustained; and that the above mentioned balance would be finally lost.

In order, however, to meet the views of the bank, in case the plea of limitations should not be sustained, the auditor has prepared the following statements to shew what would be the amount of contribution due from each of the devisees liable therefor if the claim be sustained. This will be done in reference to the plea of limitations set up by Clara and James Tilton, and the right of Mrs. Bennett to have the personal estate first applied; and the distribution would be made as it was for the complainant's claim as follows: claim of the bank as a general creditor \$1,785.21; Mrs. Tilton would pay \$180.28; Mrs. Bennett \$113.61; and Reynolds \$326.80; making \$1,120.61; being a loss on Bennett's portion of \$582.28; on Clara Tilton's of \$82.32; shewing still a loss to the bank of \$664.60.

The auditor has not allowed any of the claims for taxes; because it does not appear that there was an insufficiency of personal property on the premises, or in the county; without which proof, they cannot be regarded as a lien on the realty. And if such proof were produced, it would still be necessary to shew upon what pieces they accrued, in order to charge the proper parties with them.

He further reports, that he designs hereafter to file with this report accounts, drawn off in form, containing what is already included in this report; for the purpose of more convenient reference, so as to enable all the