

administrator of James Neilson, deceased, a creditor and mortgagee of a portion of the property in the proceedings mentioned, is now, according to the rule, laid before the Chancellor for decision, upon notes, in writing, by the solicitors of the parties.

After reading the notes, and examining and considering the proceedings in the cause, I have come to the conclusion, that the mortgage debt of the complainants, it being the oldest incumbrance, must be first paid; but, that this shall be done so as to inflict as little injury as possible upon those whose claims stand posterior to it in date, and that to accomplish this end, it was proper to adopt the course pursued by the Auditor, as stated in his report of the 13th of November last. That is, that the mortgage debt of the complainants should be so cast upon the mortgaged property, as without injury to the prior incumbrance, should leave the residue of the net proceeds of sale to satisfy junior incumbrances and subsequent deeds in the order of their priority.

I am, therefore, of opinion, that as the mortgage to Neilson and the deed to Richard Caton are anterior in point of time to the instruments under which Joseph J. Speed and Jacob Snively claim, they must be preferred to them; and, as by the decree of the 30th of October last, so much of the proceeds of the sales as Richard Caton should appear to be entitled to, were directed to be applied to the payment of his debts, such application must now be made.

The only question in the case, which remains, and which seems to present any difficulty, respects the portions of the fund to be applied to the payment of the mortgage of Neilson, and to the creditors of Caton.

The property embraced in the mortgage to Neilson, and in the sale to Caton, consisting of lots numbered 15, 16, 226 and 145, constitute in their area but a small portion of the entire tract sold, and the difficulty results from the fact, that the entire tract was sold in one mass at so much per acre, so that nothing appears upon the face of the proceedings by which we can determine the value of these particular lots, relatively to the residue of the whole tract.