

ment of the debt due them from Smith. They had a perfect right, in my opinion, to resort to either, or both of these securities, for the payment of the debt due them; and all that Mrs. Smith can demand is, that upon satisfaction of their claim, they shall convey to such persons as she may appoint the property mentioned in the mortgage of her husband, for her separate use. This they offer themselves ready and willing to do, and it is all that can be asked of them. It is nowhere alleged or pretended that the safety of the property in the mortgage from Smith, the husband, has been endangered, or its value impaired by any act attributed to these parties; and so far from their being under an obligation to proceed first against the property mentioned in it for their satisfaction, it seems to me quite manifest, from the terms in which the two deeds are couched, that it was the desire and intention of the parties that satisfaction should be made out of the proceeds of the real estate, rather than from the personal estate mentioned in the mortgage executed by Smith, the husband. This conclusion, I think altogether reasonable, when it is remembered, that with reference to the proceeds of the real estate, no provision is made for securing these proceeds for the separate use of Mrs. Smith; whilst with regard to the personal property, mentioned in the mortgage, such a provision is carefully introduced. The inference, I think, is very fair from this, that it was the intention and expectation of the parties that the debt of Neale and Luckett should be paid out of the proceeds of the real estate.

It will be seen, from what has been said, that I do not think the title of Neale and Luckett to be paid their claim out of the proceeds of this estate, depends upon the recovery from them, by legal proceedings, of the personal property conveyed by the mortgagee. My opinion is, that assuming the facts to be as stated in their answer, and they are not only uncontradicted but sustained by the evidence, all that Mrs. Smith or her trustee can demand is, that when Neale and Luckett are paid, they will convey to Mrs. Smith's appointee, as provided for in the mortgage; and this they profess themselves ready to do.