

or none who are citizens or residents of this state, then, following the provisions of the act of assembly, as to suits at common

the defendant Mary afterwards married the defendant Smith; who have hitherto refused to sell the said lands, unless they be compelled and justified in doing so by a decree of this court. Whereupon it was prayed, that the said lands, or so much thereof might be sold, as would be sufficient to pay the deceased's debts and the costs and charges of the person empowered to sell the same.

On motion of the defendant Hoggins, by his solicitor, it was *Ordered*, that the said name of Peter Hoggins be struck out of the said bill of complaint.

The defendants Smith and wife, by their answer, admitted that Gunder Erickson, deceased, did make his will, as in the bill mentioned, and that on the defendant Mary's renouncing the executorship, administration was granted to Peter Hoggins; that the said Erickson, by his will, devised to the defendant Mary, in fee simple, half of the tract of land on which he lived, in lieu of her dower, which she accepted as such; that after the marriage of these defendants, the plaintiff Cummings, and Robert Tyler, bond creditors of the deceased, sued these defendants, as devisees, and recovered judgments against them, by virtue whereof they paid to the said Cumming 3,357 lbs. tobacco, and to the said Tyler 9,602 lbs. tobacco; that the defendant Mary, was ready to do what the court should direct for the sale of the said land, and had not refused to do what was right therein, consistent with her security and safety as trustee; but these defendants insisted that the bond debts, due from the deceased, which they had paid, together with the costs, should be allowed to them out of what should be raised by a sale of the said lands; that they were strangers to, and ignorant of, the claims of the plaintiffs against the deceased; and therefore no more should be allowed to those creditors than what might appear to be justly due; and these defendants hoped that, as the defendant Mary was only a trustee involuntary, the costs and charges expended by them in this suit might be paid to them, in the first place, out of the moneys arising from the sale of the lands devised to be sold.

May, 1739.—It was *Ordered*, in presence of the counsel on both sides, that there should be a hearing of the said cause the next court on bill and answer.

30th October, 1739.—OGLE, Chancellor.—This case coming on to be heard in presence of counsel on both sides, the complainant's bill and the defendant's answer thereto being read, appeared to be as the same, are hereinbefore recited and set forth.

Whereupon it is *Decreed*, that the lands and premises mentioned in the said bill to be devised for payment of the debts of the said Gunder Erickson be accordingly sold by the master to the best bidder, and that the master for that purpose give public notice, by causing printed advertisements to be set up in the most public places, of such intended sale; and also, that the said master cause public notice, in like manner to be given, that all the creditors of the said Gunder Erickson should come in and prove before the said master their respective debts, before the 28th day of February, or that, in default thereof, such creditors will be excluded from any share or proportion of the produce arising by the sale of the said lands and premises, and this court doth further *Decree*, that the money or tobacco arising by such sale shall be applied by the master, in the first place, for the payment of the complainants' and defendants' costs of this suit; and all other necessary charges and expenses in the sale of the said lands and premises, and performance of this decree; and in the next place, to the payment of all debts whatsoever due from the said Gunder Erickson, in proportion, which shall be proved before the said master, before the 28th day of February; and then, if any money or tobacco shall remain, after payment of the said costs, charges, and expenses and debts, the same shall be applied for the payment of