

derstand the nature of the directions which the court is now called upon to give respecting them.

court signed by any one of its judges, because of his being the court, must be deemed valid.

After various other proceedings, for the principal part of which see 10 G. & J. 67, this case was again submitted for a final determination.

13th May, 1836.—BLAND.—*Chancellor*.—It will be seen, by adverting to the proceedings, that the defendant James Tilton, in his answer, relied on two distinct grounds of defence, each of which apparently, covered the whole of the plaintiff's cause of suit as regarded the real estate of the deceased; *first*, the statute of limitations; and *secondly*, the sufficiency of the personal estate of the deceased to pay all his debts. Considering the reliance upon the statute of limitations, if sustained, as an entire bar, it was obviously unnecessary to say any thing as to the sufficiency of the personalty. And, on the reliance upon the statute by this defendant being declared, by the Court of Appeals, to be only a protection of his interest in the realty, it could not be proper, upon any allegation of his only, to call for an account of the personalty, because his interests having been thus fully protected, the taking of any such account, at his instance only, might well be regarded, in relation to all others, as an impertinent and unnecessary interference with the further progress of the case. The same principles apply to the answer of Clara Tilton, who, in her answer, made after she had attained her full age, has, in like manner, relied upon the statute of limitations and the sufficiency of the personal estate.

It appears, however, that the defendants Bennett and wife had also, in their answer, relied on the sufficiency of the personal estate and the other appropriated funds. That that allegation of theirs had been distinctly placed, by the record, before the Court of Appeals; and, if available, in any degree, in favour of the realty, seems to have necessarily called for a decree or direction from that tribunal, that an account be taken of the personalty; as usual, in all cases of this kind, where the alleged insufficiency of the personalty or appropriate fund is contested by an heir or devisee.—*Campbell's case*, 2 Bland, 225; *Hammond v. Hammond*, 2 Bland, 347, 354.—But, as nothing has been said by that tribunal as to any such account, this court may now, therefore, treat it as a conceded or established fact, that the personal estate of the deceased, including so much of the profits and the sales of his real estate as he had appropriated to the payment of his debts are insufficient for that purpose; and proceed accordingly to direct the real estate indiscriminately to be sold.

The defendant Rebecca Gibson has had her claim, in lieu of dower, under the will of her deceased husband, brought fully before the court, by the bill of complaint; and, yet she has made default, and still remains silent and passive. The devise to her, in lieu of dower, may be entirely equivalent in value to her legal right; and by her acceptance of it, as such, it must be presumed, that she has hitherto so regarded it. No one of these parties has objected to the having of it, or of her dower awarded to her, in kind, or in any other form. This devise to her, in lieu of dower, is one of singular complexity, and difficult to be disposed of, with a due regard to the interests of the devisees, and the creditors of the deceased. For, as regards the mortgaged estate, there being no personal covenant in the mortgage deed for the payment of the money, it follows, that in so far as this incumbrance in lieu of dower should be thrown upon it, so as to leave any balance unsatisfied, the claim for such balance would be thereby reduced to the grade of a mere simple contract debt, so as in that, and in other respects, to be regarded as a devise to the prejudice, and in fraud of creditors, and void under the statute.