

Where one creditor may, to obtain satisfaction, have recourse to two funds, and another creditor of the same debtor can only resort

---

Therefore such a decree, as may be deemed safe as to the widow, and most beneficial to all others, may be now made, as is usual in similar cases, directing the real estate to be sold, disregarding this devise to the widow, and leaving her to come in, according to the rule of the court, for a proportion of the proceeds of the sale in lieu of her dower at the common law, to which she and all concerned have thus tacitly admitted she may safely be remitted in place of the devise.—*Maccubbin v. Cromwell*, 2 H. & G. 444; *Margaret Hall's case*, 1 Bland, 203.

The claim of the complainant being established to the satisfaction of the Chancellor, except as against the defendants James Tilton and Clara Tilton, to the extent of whose interests it is barred by the act of limitations; and, it appearing that the personal estate of the said Jacob Gibson, deceased, is not sufficient for the payment of his debts. *Decreed*, that the bill of complaint be taken *pro confesso* against the absent defendants, &c. and against the defendants Nancy Gibson, &c. *Decreed*, that the real estate of the said Jacob Gibson, deceased, or so much thereof as may be necessary, be sold for the payment of the mortgage claim of the defendants, The Farmers' Bank, and the claim of the complainant as stated in the proceedings, and all other debts due from the said Jacob Gibson, deceased; that John Scott be appointed trustee to make the said sale, &c. (in the usual form.) And at the time of advertising said sale the trustee shall give notice to the creditors of the said Jacob Gibson, deceased, to file their claims with the proper vouchers in the Chancery office within four months from the day of sale. *Decreed*, in conformity with the decree of the Court of Appeals, that the answer of the defendant James Tilton; and, according to the principles of the same decree, the answer of the defendant Clara Tilton, be, and they are hereby declared to operate as protections to the interests of the said defendants in the real estate aforesaid, as against the complainant. And in taking the account of the claim of the complainant the auditor is directed to treat it as having been paid in proportion to the extent of the interests of the defendants James Tilton and Clara Tilton; to which extent they would have been required to contribute towards the payment thereof in respect of the interests acquired by them under the will of the said Jacob Gibson, deceased, if the aforesaid answers had not been filed. And the parties are hereby authorized to take testimony in relation to the said proportional deduction from the said plaintiff's claim, before any justice of the peace, on giving three days notice as usual; provided, that such testimony be taken and filed in the Chancery office within four months after the day of the said sale.

---

From this decree some of the defendants appealed, and the case having been brought before the Court of Appeals, the decree of the Chancellor was modified as set forth in 10 G. & J. 100.

Under this decree of the Court of Appeals the case having been returned to the Court of Chancery, the auditor on the 8th of May, 1840, reported, that he had examined the proceedings, and from them stated all the claims exhibited against the estate of Jacob Gibson, deceased; also an account marked A. between the personal estate of this deceased, and the executor thereof; and also an account marked B. between the real estate of this deceased and the trustee for the sale thereof; with sundry statements marked No. 1, 2, 3, 4 and 5; all herewith filed. That in account A. the amount of the personal estate, and the proceeds of the real estate as directed by the will to be applied to the payment of debts, according to the administration