

to one of them; he who has it in his power to resort to the two funds may be compelled to obtain satisfaction, as far as he can,

account passed by the Orphans Court of Talbot county, is applied to the payment of the commissions and expenses and preference claims, as stated in said Orphans Court account; and the net balance proportionally distributed among all the paid and unpaid creditors of the deceased, who were not entitled to be preferred in the disposition thereof, whereby it appears, that these unpreferred creditors should have received as of the day of passing said Orphans Court accounts, \$0.61106 *per centum* of the amount of their claims. That in account B. the proceeds of the sale of the real estate are applied to the payment of the trustee's allowance for commission and expenses; and the costs of suit of the complainant and appellant in the first appeal, and of the appellees in the second appeal; for taxes due upon the estate sold; then to the satisfaction of the mortgage debt due to the defendant The Farmers' Bank, and the balance left unappropriated, because of its inconsiderable amount, and the many difficulties now attending a distribution thereof among the other creditors of the deceased.

The auditor further says, that claims No. 3, 4, 5 and 8, are not proved as the act of Assembly requires; that the original causes of action are wanting to support claims No. 3, 4 and 5; that all the devisees of the deceased plead the statute of limitations to claims No. 2 and 7; that James Tilton and Clara Tilton, and the heirs of Harriet Bennett plead this statute to claims No. 3 and 8; that Reynolds and wife plead this statute to claims No. 2, 3, 4, 5, 7, 8, 9 and 10. The auditor submits to which of these claims the statute applies; and that these claims, *viz*: No. 2, 3, 4, 5, 7, 8, 9 and 10, in the mean time be suspended. He further reports, that claim No. 10 appears to be a judgment recovered by the claimant of No. 7, against James Tilton, as the surety for the same debt as No. 7; and the auditor submits how far this judgment supports claim No. 7, as against any interest said Tilton may have in this estate. That the tax bills are not proved; nor have they been sanctioned by the trustee; it is, therefore, submitted, that they be suspended. He also reports, that many of the devisees, as well as the defendant, The Farmers' Bank, require, that the claims should be fully proved; and that claims No. 2, 3, 4, 5, 7, 8 and 9, are not fully proved.

The auditor further reports, that he has assigned so much of the balance of the proceeds of sale to the satisfaction of the mortgage debt of the defendant, the Farmers' Bank; because the whole sales were of the mortgaged premises. But, as the Court of Appeals, in their opinion delivered in this cause, at the December term, 1838, a copy of which is filed, say, that there may exist a state of things in which this mortgage claim may be reduced, certain statements are submitted in illustration of this point. That part of the opinion is as follows: 'If it should turn out, that the residue of that part of Marengo, devised to Fayette Gibson, and not by him conveyed to Edward Lloyd or John Blake, united with the other parts of Marengo, to which Fayette Gibson was entitled, after paying their just contribution towards the mortgage debt, and all other debts of the deceased, should prove inadequate to the payment of that portion of the mortgage which the part of Marengo devised to Fayette Gibson was bound to contribute; then with reference to the other devisees, owners of Marengo, the mortgage debt of the Bank must be deemed satisfied and paid to the extent of such inadequacy.' Statement No. 1, shews the value of Jacob Gibson's real estate at the time of his death. Statement No. 2, shews the value of the same, as of the time of taking the testimony in relation thereto. Statement No. 3 and 5, by which it appears, in these views of the proof, there will be such a deficiency as is intimated in the opinion of the Court of Appeals. And statement No.