out of that fund upon which the other creditors can have no claim, so as to leave the other fund for their satisfaction.   The principle

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4, by which, in another view of the proof, there will be no such deficiency. The proof, in relation to all these statements, is vague, and much of it derived from papers filed in this cause without a commission; moreover, it is applicable to different periods of time, much of it founded on estimates merely, and omits the valuation of some real estate of which, it would seem, the deceased died seised. These statements, 3 and 4, assume, that all the debts filed are to be paid; whereas to the most of them the statute of limitations has been pleaded by the devisees, and other parties, the Bank among the rest; and if it apply to them, then even the deficiency appearing on the statement No. 3 would be reduced to a small sum, if not entirely disappear.

The auditor further says, that in the event of the Chancellor's being of opinion, that these statements make it doubtful if the Bank can now receive the whole of its mortgage debt, it would seem, this doubt may be removed by the effect of the right of the Bank to claim by way of substitution, in the stead of the unpreferred creditors who have been paid off by the Orphans Court accounts, as is recognized by the opinion of the Court of Appeals. For, as the personal estate of Jacob Gibson, deceased, which would, if properly administered, have paid to all the unpreferred creditors thereof $0.61106 in the dollar, as per account A. has been illegally administered, with the approbation of the devisees of the testator, whereby the creditors, the Bank among the rest, have lost this dividend, they are entitled to claim the same now, by way of substitution to the rights of these creditors so paid off; so that the Bank, for its claim No. 6, $13,739 55, should be entitled to $8,395 89, as against all the devisees; and according to statement No. 1, to upwards of $3,000; and according to statement No. 2, about $4,000, as against these proceeds of sale, either sum exceeding the deficiency estimated by statement No. 3 and 5.

It is therefore submitted, that, in this view of the case, the Bank has a claim against the mortgaged estate sold, by way of substitution to the rights of the creditors paid off out of the personal estate, to a much larger sum than can be the deficiency of its contribution by reason of the release to Lloyd; and, therefore, none of the parties to these proceedings are injured by the payment to the Bank of its entire claim out of these proceeds. Again, the Bank released Lloyd's part of Marengo, on condition that the proceeds thereof, as bought by Lloyd, should be applied to the payment of the debts of Jacob Gibson, deceased, which proceeds were accordingly, without objection by the parties, so applied, so that the release of the Bank, though its operation was to diminish the fund liable for the payment of the mortgage debt; yet, as the value of this released mortgaged estate was applied to the payment of the other debts due by the deceased, to the exoneration of the real estate of the other devisees of the testator therefrom, it would seem, these other devisees cannot now object to this release, unless they permit the Bank and Lloyd to claim, by way of substitution to the rights of the creditors so paid off by the terms of the release. This would increase the amount to which the Bank would be entitled, by way of substitution, and render it still more improbable, that any injury could result to these parties by paying off the whole of its mortgage debt.

The auditor further reports, that there is not now, in this cause, sufficient evidence from which he can accurately ascertain what should be the deduction from the plaintiff's claim, No. 1, by reason of the successful plea of the statute of limitations thereto by James Tilton and Clara Tilton; and he submits, that further proof be taken for that purpose.   He also reports, that James Tilton was one of the sureties of Edward R. Gibson on his bond as executor of the deceased; and, in order to the