

upon which this arrangement is made is not deduced from that which may properly be considered as the contract between debtor

indemnity of himself and his co-surety, Edward R. Gibson, conveyed by mortgage to them all his real estate devised to him by the deceased, prior to any of the conveyances thereof now among the papers. That claimants of No. 1, 3, 4, 5 and 7, have recovered judgments against this executor for their legal dividends of the assets of the deceased respectively, but have not received the same. That the personal estate of the deceased appears to have been long since fully paid off; the said Edward R. Gibson and James Tilton are both non-residents of this state. The auditor submits, therefore, if under these circumstances, the interest of said Tilton in this estate should not be held liable for the payment of the legal dividends of the personalty on these judgments; and also, how far these creditors can avail themselves of this mortgage; and of their judgments to prevent the operation of the statute of limitations, as pleaded against them by the said Edward R. Gibson and James Tilton; those claiming under them, or of the mortgaged premises, as a security for the payment of their debts.

The auditor further reports, that the claimant No. 9, alleges, in his petition, among other matters, that he has a right to be reimbursed the amount of his said claim, as well out of the estate of the deceased, as out of any interest Edward R. Gibson or James Tilton may have therein, to all of whom he claims to stand in the relation of surety; that he claims to stand in the relation of co-surety to Fayette Gibson; and having paid, on account of the principal debtor, the amount of this claim, that he is entitled to be reimbursed one-half thereof out of any interest Fayette may have in the estate. He alleges, that Edward R. Gibson and James Tilton are non-residents, and that there is no other fund from which he can obtain payment. The auditor submits the effect of their several protections upon the respective interests of the parties.

And the auditor further reports, that since the preparation of these accounts and report, Francis G. Sheets and Clara his wife, formerly Clara Tilton, have filed their plea of the statute of limitations, and objected to all the claims; and that the heirs of Harriet Bennett and John W. Blake have filed the same plea and objection to all the claims, except that of the complainant.

On the 23d of December, 1836, the defendants Reynolds and wife, Edward R. Gibson, Fayette Gibson, the heirs of Harriet Bennett, the heirs of John W. Blake, and the devisee of Lloyd, relied on the act of limitations, laches, and lapse of time, against claim No. 7. On the 22d of July, 1836, the defendants Reynolds and wife, relied on the act of limitations against claim No. 2. On the 11th of February, 1837, the defendant Rebecca Gibson relied on the act of limitations against claims No. 2 and 7. On the 16th of May, 1839, the defendants Clara Tilton and the heirs of Harriet Bennett, relied on the act of limitations against claims No. 2, 7 and 8. On the 8th of February, 1840, the defendant The Farmers' Bank, relied on the act of limitations, laches, and lapse of time, against claims No. 2, 3, 4, 5, 7, 8, 9, and 10; and required, that the same should be fully proved. On the 25th of February, 1840, the defendants Sheets and wife, and the heirs of John W. Blake, and of Harriet Bennett, relied on the act of limitations against claims No. 2, 3, 4, 5, 6, 7, 8, 9 and 10; and Sheets and wife, at the same time, relied on the act of limitations against claim No. 1. On the 16th of September, 1840, the defendants James Tilton and wife, relied on the act of limitations against claims No. 2, 3, 4, 5, 6, 7, 8, 9 and 10. On the 19th of October, 1840, Lloyd's devisee relied on the act of limitations against claims No. 2, 3, 4, 5, 6, 7, 8, 9 and 10; and also required full proof thereof.

On the 3d of November, 1840, the defendant the Bank, excepted to the claims of