

and creditor, but is founded on a natural and moral equity, that it shall not depend upon the will or caprice of one creditor who has

Lloyd and Blake, grounded on their alleged payment of debts due by the deceased, as having no just foundation; and as being barred by the act of limitations. And on the same day the plaintiff excepted, in like manner, and also relied on the act of limitations against claims No. 2, 3, 4, 5, 7, 8, 9 and 10.

On the 11th of July, 1840, the heirs of Harriet Bennett and of John W. Blake, excepted to the report of the auditor; 1st. That the claims to which they have objected have not been rejected. 2d. That in the said report he has assumed two valuations of the real estate, neither of which is based on sufficient testimony. 3d. That he has assumed as the basis of valuation the estimate made many years ago; whereas, it ought to be taken as of its present value. 4th. That having assumed as the basis of value an estimate made many years ago, he has reduced the estimate to make it correspond with the difference between the estimate of Marengo and the sum for which it actually sold; whereas, different causes may have operated to increase or diminish in equal or less degree the value of each piece of property; and the assumption is without proper evidence to sustain it. 5th. That he has not shewn what deduction ought to be made from the claim of the complainant in consequence of the plea of limitations, set up and allowed, of Clara Tilton and James Tilton. 6th. That he has not shewn what part of the claim of McCormick the plaintiff, as against the heirs of Gibson, rests upon the ground of substitution; and what part of the portion of the said claim to be paid by these defendants they ought to be relieved from, under the opinion of the Court of Appeals, in consequence of a failure of proof as to the claims paid out of the personal estate, in whose place a substitution on the part of McCormick is sought to be established. 7th. That the said report is not complete and full, and does not shew the liabilities of any portion of the estate, as it ought, of all and every part before justice can be done to the heirs, the complainant, the Bank, or other creditors. 8th. That the whole purchase money of the property sold, after deducting costs, and the trustee's expenses, are applied to the Bank mortgage debt, whereas it may happen, that the part sold is not sufficient for the payment of the mortgage, and that portion of the general debts which may be thrown upon it; and that such an appropriation ought not to be made, because of the right to substitution, as stated by the auditor; for the reason that these defendants object to the claim of the Bank, and plead limitations thereto, whenever made on the ground of substitution, or otherwise than under the mortgage upon the mortgage property. 9th. That there is no proof of the validity of the debts mentioned in account A. and the auditor erred in assuming them to reach such an amount as to reduce the personal estate to \$0.61106 in the dollar; or any other part of a dollar, less than the whole. 10th. That statements 3, 4 and 5, are erroneous, because the whole of Marengo ought to be estimated, and its value ascertained, and the excess of value over and above the payment of the mortgage, ought to be applied to the payment of the general debts like the rest of the property of the deceased; and not otherwise, so far as these defendants are concerned.

On the same day the heirs of John W. Blake excepted to the auditor's report, because no account has been returned allowing in their favour, and as a deduction from that portion of the debts which the property sold to their father ought to pay \$5,000, relied upon by the answer of the said Blake, as being a part of the purchase money paid to this Bank, in liquidation of a just debt due by the estate.

On the petition of the heirs of Harriet Bennett the parties were authorized to take testimony before any justice of the peace in relation to the facts presented by the auditor's report. And some time after the case was again brought before the court.