

the personal estate, the choice of the creditors shall not determine whether the legatees shall be paid or not. So that wherever there

ties are hereby authorized to take testimony in relation to the said account before any justice of the peace, on giving three days notice as usual: *Provided*, that the said testimony be taken and filed in the Chancery office in this case, on or before the twentieth day of February next.

The time allowed by this order for the taking and returning of testimony was extended to the sixth of March following; under which some further proofs were taken and returned accordingly.

After which the auditor by his report dated on the 8th and filed on the 9th of March, 1841, says, that in obedience to the order of the 7th of December, 1840, he had examined the proceedings in this cause and arrived at the following conclusions:

The amount of proceeds of sales made by the trustee on the 27th of March, 1839, appears, from the auditor's report filed on the 8th of May, 1840, to have been \$15,637 36; from which deduct the commissions and expenses of the trustee as shewn by the same report \$728 47; and costs of suit in this court and the Court of Appeals, \$879 17; and additional costs now due \$110 57; and there remains the net sum of \$13,919 15, to be appropriated according to the principles heretofore established in this cause. The mortgage debt of The Farmers' Bank of Maryland, with interest to the day of sale, as per the same report, and covering all the property sold amounts to the sum of \$13,739 55. And, if the net proceeds of sale are to be applied to its payment, there would remain for distribution amongst the general creditors only the sum of \$179 60.

The auditor finds, that all the claims filed against the estate; except that of the complainant, are barred by the statute of limitations, which has been pleaded by all the parties whose interests would be affected by them.

The mortgage of the Farmers' Bank covers the whole of that part of the estate of the deceased, known as Marengo, which was devised to Fayette Gibson, to Edward Gibson, and to Frances Gibson, now Frances Tilton, wife of James Tilton. Before the institution of these proceedings, Fayette Gibson had sold his portion thereof to Edward Lloyd, one of the defendants, with the consent of the Bank; and it had been held not to be answerable for any part of the mortgage debt. The Court of Appeals have further said, in reference to the position in which the Bank has been placed by their consent to the proceedings of Fayette Gibson, that if it should turn out, that the residue of that part of Marengo, devised to Fayette Gibson, and by him conveyed to Edward Lloyd or John W. 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 in 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. Hence it becomes necessary before determining how much of the fund in hand ought to be applied to the payment of the mortgage debt of the Bank, to ascertain what part of it, the land sold to Lloyd would have been made to contribute if now liable. And as Edward Gibson's devise, which is the part of Marengo alluded to in the opinion of the Court of Appeals, as the part to which Fayette Gibson is now entitled, is answerable for its proper proportion of the general debts, its liability, in this respect also, must be established before making a distribution of the proceeds of sale.

But no part of the estate of the deceased has been sold; except those parts of