

is a double fund, though this court will not restrain a party, yet he shall not so operate his payment as to disappoint another claim, whether arising by the law, or by the act of the testator. (p)

Marengo which were devised to Edward Gibson and Frances Gibson, now Mrs. Tilton; and the only mode of ascertaining the liability of any one share of the estate is to make an apportionment of the outstanding claims against all the devisees who will be eventually answerable therefor, according to the most accurate valuation that can be obtained. For the purpose of affixing a proper valuation upon the several pieces of property devised by the deceased, the auditor has relied on the testimony taken under an order of court of the 14th of September last; and as he is required, for the purpose of giving proper effect to the plea of limitations set up by James Tilton, for his life interest, and Clara Tilton, for her part of the estate as allowed by the court, to make the estimate as of the day of the death of the deceased, he has considered the true intent and meaning of the order of the 7th of December, 1840, to be, that all the property must be valued as of that day, and endeavoured accordingly, so to estimate it. There are three parcels of property, mentioned in the will of the deceased, not embraced by the testimony, viz: a house and lot in Easton, certain land in Alleghany county, and certain land in Tuckahoe. These parcels have therefore been omitted by the auditor in all his calculations; but, if they should be hereafter found by the trustee, they might be sold, and the proceeds distributed amongst the several parties according to their respective rights and interests as they may, by that time, be established. The rest of the estate of the deceased is valued as of the time of his death in the following manner, viz:

First, Edward Gibson's part of Marengo at \$17,062 50; *Second*, Frances Tilton's part of the same at \$6,189 59; *Third*, Fayette Gibson's part of the same at \$7,075 00; *Fourth*, Clara Tilton's devise at \$5,681 00; *Fifth*, Anne Reynolds, wife of Joseph Reynolds, devise at \$9,315 00; *Sixth*, Fayette Gibson's devise sold to John W. Blake at \$10,500 00; *Seventh*, Harriet Bennett's devise at \$7,840 00. The whole estate valued at \$63,663 09.

According to the above estimate the mortgaged property ought to have paid, at the death of the deceased, the mortgage debt in the following proportions, viz: The whole mortgage debt with interest to the day of sale amounts, as per auditor's report filed the 8th of May, 1840, to \$13,739 55. *First*, Edward Gibson's part of Marengo would have paid for its proportion \$7,730 09; *Second*, Mrs. Tilton's part would have paid \$2,804 17; and *Third*, Fayette Gibson's part, sold to Lloyd, \$3,205 29.

In order to arrive at the proper value of the equity of redemption in these parcels of land the auditor has estimated the interest of Mrs. Rebecca Gibson, the widow of the deceased, and charged it upon that part of Marengo which was devised to Fayette Gibson, it being proved, that for the first few years after the death of her husband, she resided on that place. He finds from the testimony, that her interest is valued at one hundred and fifty dollars *per annum*; and from the proof, taken on the sixth day of March, 1841, that at the death of the deceased she was forty-nine years of age; which, according to the rule of this court, would entitle her to nine hundred and thirty-seven dollars and fifty cents. This sum has accordingly been deducted from the equity of redemption of that part before apportioning the general debts, as an incumbrance not subject to any of them.

The equity of redemption on Marengo, after satisfying the mortgage debt, and subject to Mrs. Rebecca Gibson's interest under the will of the deceased, will be as