

But in making this arrangement great care must be taken not to lessen or impair, in any manner whatever, the obligation of the

follows, viz: *First*, Edward Gibson's part valued at \$17,062 50; deduct portion of mortgage debt \$7,730 09, leaving \$9,332 41; *Second*, Fayette Gibson's part sold to Lloyd, valued at \$7,075 00; deduct portion of mortgage debt \$3,205 29; and Mrs. Gibson's dower \$937 50, leaving \$2,932 21; *Third*, Mrs. Tilton's part valued at \$6,189 59; deduct portion of mortgage debt \$2,804 17, leaving \$3,385 42.

In order to assess upon Edward and Fayette Gibson's devise of Marengo a proper proportion of the complainant's claim, it will now be necessary to apportion that claim amongst the several devisees, assuming, that the mortgaged property is to contribute according to the value of the equity of redemption only as just settled. The complainant's claim is a note dated 18th October, 1817, payable five months after date, due 21st March, 1818, \$2,500 00, deduct dividend of personal estate, \$1,994 93; we find his claim as of this date to be \$505 07; of which Edward Gibson's devise ought to have paid \$96 22; Fayette Gibson's devise, sold to Lloyd, \$30 23; Mrs. Tilton's, \$34 91; Mrs. Reynold's, \$96 04; Mrs. Bennett's, \$80 83; Fayette Gibson's, sold to John W. Blake, \$108 27; and Clara Tilton's, \$58 58. A proper reduction of the complainant's claim may now be made on account of the plea of limitations put in by James Tilton and Clara Tilton. The whole claim of complainant properly chargeable on the real estate as above \$505 07; deduct Clara Tilton's portion thereof \$58 58; and six-fifteenths for James Tilton's life interest, \$15 96; leaves \$432 53, due to the complainant.

As the Court of Appeals have said, that the complainant is entitled to substitution in the place of creditors who, to his exclusion, were paid out of the personal estate; except against Bennett's and Blake's heirs, it may be seen by the following statement what is the amount as against the latter, as well as all the rest of the devisees.

His claim properly chargeable against the real estate on the 21st of March, deducting loss by the plea of limitations, as above, \$432 53. Interest from the 21st March, 1818, to the 27th of March, 1839, \$545 42; shewing as the basis of apportionment the sum of \$977 95, against Bennett's and Blake's heirs. The sum to be apportioned as against the rest will be found by adding dividend of personal estate, \$1,994 93, with interest thereon from 21st March, 1818, to the 18th December following, \$88 77; amounting to \$2,083 70. Then paid by the executors, \$600 00; leaving a balance of \$1,483 70; interest on which from the 18th December, 1818, to the 27th March, 1839, \$1,804 92, amounting to \$3,288 62, which, added to the sum shewn as the basis of apportionment, amounts to \$4,266 57. But the complainant's claim as now recoverable amounts to the sum of \$3,446 75; of which Edward Gibson's devise would pay \$1,266 06; Fayette Gibson's, sold to Lloyd, \$397 79; Mrs. Tilton's, deducting six-fifteenths for James Tilton's life interest, \$275 42; Mrs. Reynolds', \$1,263 70; and Bennett's heirs, \$243 78. If we add to this amount the loss by not allowing the complainant the benefit of substitution against Bennett's heirs, his whole claim as shewn; viz: as above, \$3,446 75; loss, \$819 82, the whole claim will be as above, \$4,266 57.

In the above apportionment the auditor has not included the devise to Fayette Gibson which was sold to John W. Blake, because it appears from the testimony, that after the sale of that portion to him, he paid debts of the estate to the amount of \$5,855 56; which is larger than the whole of the complainant's claim, even without allowing interest on the payment to the day of sale, to bring the payment to an equality with it.

Having now ascertained what portion of the general debts are properly chargeable upon Fayette Gibson's portion of Marengo, sold to Lloyd, as well as upon