

diction; and where it is clear, that the creditor can sustain no loss, nor be in any way delayed, or have his claim subjected to

tee, \$728 47; costs in this court and the Court of Appeals, \$879 17; additional costs; register's fees, \$23 07; tax, 50 cents; depositions, \$45 00; and auditor's fees, \$42 00; making \$110 57; amounting altogether for commissions, costs and expenses, to \$1,718 21. To the Farmers' Bank for their mortgage debt, \$13,739 55; deduct losses above, \$3,045 55; then add, to be repaid by Mrs. Tilton, \$176 07; leaving due to the Bank the sum of \$10,869 82. To James Tilton, for his life estate in Mrs. Tilton's equity as sold, three-twelfths, \$584 30. To the complainant for his proper proportion of Mrs. Tilton's equity, \$275 42. To ditto, for his proper proportion of Edward Gibson's devise, \$1,266 06. To ditto, for proper proportion of Fayette Gibson's devise, sold to Lloyd, \$397 79, and to ditto, for balance of Mrs. Tilton's equity, \$525 76. Being equivalent to the before mentioned whole amount of sales, \$15,637 36.

By the foregoing account the complainant would receive out of the funds in hand on his claim, the sum of \$2,465 03; his whole claim as recoverable amounts to \$3,446 75; leaving still to be provided for, the sum of \$981 72; of which Mrs. Reynold's devise ought to pay \$322 96; and Mrs. Bennett's, \$158 76.

Mrs. Tilton's devise sold for \$5,137 36; deduct proportion of mortgage debt, \$2,804 17; proportion of costs, commissions, &c. \$299 57; leaving a balance due her of \$1,173 90. Of which she repaid to the Bank, \$176 07; leaving to be repaid to her by Reynolds and wife, \$440 74; and for costs, \$159 01; making \$599 75; by Bennett's heirs, \$85 02; and for costs, \$133 83, making \$218 85; and by Blake's heirs for costs, \$179 23.

The following will shew the situation of the estate after the distribution of the proceeds according to the former account. *Debtor*—The estate to the Bank, \$1,260 59—to complainant, \$981 72—to Mrs. Tilton, \$997 83; making \$3,240 14. *Credit*—Due by Reynolds and wife, \$2,230 60; by Bennett's heirs, \$533 47; by Lloyd for costs, \$120 77; by Blake's heirs for costs, \$179 23; paid by Mrs. Tilton to the Bank, \$176 07; amounting as above to \$3,240 14.

If these views be correct the Bank would lose the sum of \$1,785 21; but as there would have been no loss if the mortgaged property had been properly applied, the Bank can come upon the estate only as a general creditor for this balance; either in its own right, or by substitution; and it is conceived, that for the amount which is claimed as a general creditor, the plea of limitations, as set up by the devisees, would be sustained; and that the above mentioned balance would be finally lost.

In order, however, to meet the views of the Bank, in case the plea of limitations should not be sustained, the auditor has prepared the following statements to shew what would be the amount of contribution due from each of the devisees liable therefor, if the claim be sustained. This will be done in reference to the plea of limitations set up by Clara and James Tilton, and the right of Mrs. Bennett to have the personal estate first applied; and the distribution would be made as it was for the complainant's claim as follows: claim of the Bank as a general creditor \$1,785 21; Mrs. Tilton would pay \$180 28; Mrs. Bennett \$113 61; and Reynolds \$326 80; making \$1,120 61; being a loss on Bennett's portion of \$582 28; on Clara Tilton's of \$62 32; shewing still a loss to the Bank of \$664 60.

The auditor has not allowed any of the claims for taxes; because it does not appear that there was an insufficiency of personal property on the premises, or in the county; without which proof, they cannot be regarded as a lien on the realty. And if such proof were produced, it would still be necessary to shew upon what pieces of property they accrued, in order to charge the proper parties with them.