

legatee to call for this species of marshalling; that if those creditors, having a right to go to the real estate descended, will go to

the several creditors, that which has been first pleaded and filed must be first applied and have an operation to the exclusion of any subsequent plea of limitations against the claim of him who so first pleads; but where pleas of the statute of limitations have been filed by different creditors on the same day, so as to have a countervailing operation against each other, all such pleas must be rejected so far as they so operate; that no plea of the statute of limitations can be of any avail against a claim stated in the bill and expressly or tacitly allowed by the decree, unless upon the ground of some specified fraud.—*Strike's case*, 1 *Bland*, 68; *Williamson v. Wilson*, 1 *Bland*, 441; *Welch v. Stewart*, 2 *Bland*, 38; *Hammond v. Hammond*, 2 *Bland*, 359. That no plea of the statute of limitations can be allowed against any claim not then filed or put upon the record; that a plea of the statute of limitations against a claim may be put in at any time after its voucher has been filed; provided he who so pleads has not done any act which necessarily implies a waiver of a reliance on such plea.—*Welch v. Stewart*, 2 *Bland*, 41.—That all directions by a party or creditor to the auditor, or exceptions to his report which, in substance, rely upon the statute of limitations as a bar to any claim then filed, other than those of the plaintiffs, are to be considered as sufficiently formal pleas to that effect, subject to the before mentioned rules.—*Strike's case*, 1 *Bland*, 93; *Norwood v. Norwood*, 2 *Bland*, 481, *note*. And that the statute of limitations runs up to the time of filing the voucher of the creditor's claim.—*Welch v. Stewart*, 2 *Bland*, 41.—But if it does not appear, or is not shewn when the voucher was filed, it cannot be taken to have been filed before the day on which it appears to have been first stated by the auditor, or the day of filing the plea in which it is first noticed.

In order to give full effect to the right of substitution to which any creditors, so far as they may not have a right of preference in virtue of any lien, may be entitled, the proceeds of the sale of the real estate must be so distributed as not to award any thing to a creditor who has received any payment from the personal estate until all the other creditors have received an equal proportion of satisfaction from the realty.—*Hammond v. Hammond*, 2 *Bland*, 384; *Wilson v. Paul*, 11 *Cond. Cha. Rep.* 320; *Mitchelson v. Piper*, 11 *Cond. Cha. Rep.* 321.—For which purpose a statement must be made shewing how the personal estate of the deceased has been disbursed among his creditors; and the amount of the debts paid by those who the Court of Appeals have declared have a right to be substituted in the place of such creditors of the deceased. Nothing, however, can be returned to any one of these defendants as devisees of the deceased, as the surplus of the proceeds of the sale of the real estate devised to him, until he has made good, from such surplus, all that for which he may be in any way liable to the estate of the deceased, or to any one or more of the other devisees.

All these directions must be controlled by, taken and construed in conformity to the opinions, directions and decrees of the Court of Appeals. And the said report of the auditor, and the exceptions thereto, so far as the same may be at variance with these directions, are hereby overruled.

Whereupon it is *Ordered*, that this case be and the same is hereby referred to the auditor, with directions to state an account or accounts accordingly, from the pleadings and proofs now in the case, and from such other proofs as may be laid before him; from which he will exclude all claims not then sufficiently authenticated; and also all others not then fully proved, where full proof has been required by any one competent to plead the statute of limitations, and also to require full proof for the protection of his own interests.—*Dorsey v. Hammond*, 1 *Bland*, 471.—And the par-