discrimination in the view of a Court of Equity, and not apparent to me

Its claim was against Jacob Gibson the testator for money loaned him, Lloyd and the Edmondstons claim by purchase from one of the devisees of the testator, and it would be a little remarkable if their title should be more respected than the title of the Bank claiming under the testator himself certainly unless the Bank has done something to forfeit the vantage ground upon which it stood as the creditor of Jacob Gibson its title would be stronger than the title of those who claim under volunteers under him. The Bank lost a part of its debts by releasing that portion of the mortgaged premises purchased by Lloyd from the operation of the mortgage but this was prejudical to no other party but itself and is of course no ground of complaint against it, But although the Bank was unquestionably entitled to have its debt paid by a sale of the mortgaged premises as the Court of Appeals have decided, yet if the pretensions of the Complainant are established to the extent to which they are now advanced, nearly every thing which they have received for their debt will be taken away,

And why should this be so because as is argued they certainly purchased with full notice of the claim of the Complainant, It is certainly true that the Bank did purchase with notice that it was buying subject to the devises made to the Complainant but that it purchased with notice or even with the suspicion that such a claim as is now set up existed it is impossible to believe, The Court of Appeals it would seem had ex industria omitted to define the rights of the Complainant, though it adjudged that she had rights, and declared the sale must be made subject to them; and it is quite probable not to say certain, that the only rights which it was supposed the Complainant had upon this property at the time of the sale to the Bank, was the right of habitation &c.

The Bank purchased this property in 1839 ever since which time as before, Fayette Gibson has lived upon and enjoyed the use of it paying the but two quarters rent. The Complainant lived with him and was supported upon the property, and now after omitting to press this claim for twenty eight years, it is said this same property as the property of the Bank is liable for the Annuity ab-initio I cannot think so Fayette Gibson and his mother the Complainant, have actually, and in truth enjoyed the fruits of the estate almost to the present time and to suffer the security of the Bank to be swept from it, by arrears, which accumulated during that period is inconsistent with my notions of Justice and as I think would be in conflict with the principles of the case in 1 Howard before referred to. If claims which have slept for upwards of twenty years can be thus revived when the estate upon which they are supposed to rest, has passed into other hands the title to property would never be secure and that confusion so much deprecated by Lord Redesdale Horenden vs Lord Amesley 2 Sch & Lef 636 would constantly arise, I am strongly impressed with the conviction that the Complainant in this case has neglected for an unreasonable length of time to assert her claim and if so she has no title to call for the active interposition of a Court of Equity in her favor, It was said by Chief Justice Marshall in Elmendorf vs Taylor 10 Wheat 152 that from the earliest age Courts of Equity have refused their aid to those who have neglected for an unreasonable length of time to assert their claims especially where the legal

estate has been transferred to purchasers without notice In the case of Piatt vs Vattier & al 9 Peters 405 it is said in the language of Lord Redesdale to be the law of Courts of Equity that it will not entertain stale demands, There is another view of this case, so far as it is proposed to charge the property purchased by the Bank with the payment of this annuity which seems to me to present an obstacle not easily surmounted, Jacob Gibson had mortgaged his Marengo Estate to the Bank to secure the payment of the sum of $13,720 due from him for money borrowed and he by his will charged the devisees of this same estate with the payment of the annuity in question to his widow the Complainant which it is contended and perhaps under a different State of circumstances is might properly be contended would create a charge upon the land devised. There can be no doubt that a widow with respect to a devise made to her in lieu of her dower is to be considered as a purchaser with a fair consideration but if the provision made for the wife by the will is fraudulent, in being greater than the value of her common law rights and therefore unjust and injurious to creditors to the extent of such excess, her title would not prevail against the claims of creditors. Gibson et al vs Mc Cormick 10 Gill and John 113. 114, In this case it is not understood that the provision for the widow, exceeds her common law rights and is therefore unjust to the body of the creditors of the testator but the question is whether after having in his life time, given to one of his creditors, a mortgage on a particular portion of his estate to secure the claim of that creditor, he can afterwards take that security from him by charging that same part of his estate with the provision for his wife, even though that provision in view of his whole estate does not exceed her common law rights.

Marengo is the estate upon which the testator gave a mortgage to secure the debt due from him to the Bank but he afterwards by his will, charges this same estate with the provision for his widow and by this change if the Complainant is successful in his pretensions the security to the bank is most effectually destroyed and this without necessity as it is manifest the testator owned other estates out of which the proper provision for his wife could have been made. It seems to me impossible such a doctrine can be established for if so it would place creditors who have obtained security from their debtors frequently entirely at their mercy The utmost that the wife could claim under such circumstances would be to the extent of her dower interest in the particular land mortgaged; and the husband could not be allowed, by throwing his wife's claim entirely upon it, to wrest from his creditor a security which he had fairly given him – The widow for the amount of the provision beyond her dower interest in that particular piece of property must be regarded as a volunteer and her claim for such excess subordinate to the claim of the creditor.

The bill in this case therefore will be dismissed

John Johnson Chr

Decr 7th 1848.

Samuel Chew Ex^r of Rebecca Gibson vs The President & Directors of the Farmers Bank of Maryland

In Chancery
Decr Term 1848

This cause standing ready for hearing and being submitted the Counsel for the parties were heard and the proceedings read and considered,