

The effect of this provision appears to be that the sheriff is to sell as if no such subsequent mortgages had been made, and he is to declare a dividend on the gross proceeds in favour of all creditors and notwithstanding that some executions are prior and some subsequent to the mortgages, it would seem to be intended that the dividend should be an equal dividend on all creditor's claims, but the dividends applicable to the claims subsequent to the mortgages are to be applied as far as may be necessary in the payment of the mortgages prior to such claims.

This may not be, and probably is not, a satisfactory method of dealing with such claims, nevertheless it is at present the law, and the proper way of dealing with any anomalies it occasions would appear to be by Legislative amendment of the provision.

As far as the claims of creditors and incumbrancers were concerned in the case in question, whether the sale was effected by the sheriff, or the Master, their rights were the same, and it does not appear to be a tenable proposition to say that the mode of sale can in anyway affect them; whatever the rights of the parties were if the sale had been made by the sheriff, they were no otherwise though the court for the more convenient disposition of the case saw fit to direct the sale of the land to be made by its own immediate officer; and we do not understand on what principle the learned Chancellor acted when he refused to give effect to the provisions of the above mentioned section.

The scheme which s. 34 appears to provide is this, the gross proceeds of the property sold is to be taken and equally apportioned among all the creditors, and any prior mortgages are to be paid out of the dividend allottable to subsequent executions. Applying that principle it would result as follows, assuming the amounts realized and the amounts of the claims were as follows:—

	Claims.
A. Prior Execution creditors....	\$1,000
B. Subsequent mortgage	200
C. " creditors	500
D. " mortgage	1,300
E. " creditors	1,500