No. 1777 Equity.

Casper Mauly. These defendants by their said guardian State further for answer that the Complainants in this case the Children of Eleanor Harding the sister of the said testator, Christian Barr and Teresa McElfresh, are the only Heirs at law of the said Casper Mauly deceased.

These defendants by their said guardian further State for answer. That they are informed and believe that the Complainants as the Heirs at-law of Casper Mauly claim, and intended to enforce the claim in a Court of law. to one undivided third part of the real estate purchased after the making and executing said will. Thereby to deprive the said Teresa McElfresh the residuary devisee of said real estate, and to defeat the manifest intention of the testator, and to claim both under the will and against the will.

These defendants by their said guardian State further for answer that they are advised by their Counsel That it appearing clearly. That the testator intended that all the land of which he died the owner and possessor. not specifically devised should vest in and go to the residuary devisee. the rule in Equity is that the said Complainants cannot take both as Heirs and legatees and devisees. and that this honorable Court as a Court of Equity will put them to their election to take under the will or as heirs, and that they will not be allowed to take in both capacities as heirs and legatees. These defendants by their said guardian State further for answer to said Bill of Complaint. That they are ready and willing. so soon as the said complainants. will under the authority of this Court elect to take under the will. and abandon all claim to the after acquired land intended for the said Teresa McElfresh in residuary devise. to account to and pay over all sums of money, to a trustee to be appointed to take charge of said pretended trust fund. or to do or performe any other act which it shall seem just and equitable for this Honorable Court to make in the premises: but these defendants respectfully submit to this Honorable Court wether they are compelled to yield up to the said Complainants. the said pretended trust estate until they make their Election. wether they take under the will or as heirs at law. These defendants by their said guardian admit That John H. McElfresh is dead. and that he died