

the title and lien in the same person. The case was taken to the Court of Appeals, and will be found reported in 2 *Gr.*, 230.

The appellate Court, it would seem, do not express a positive opinion in reference to the existence of the charge in point of law; but the terms of the will of Francis J. Mitchell are too explicit and direct to leave any doubt upon the subject, and it is agreed on all hands that the charge did originally exist, and that it is now extinguished by the descent of the title to the property upon the complainant in whose favor the lien was created.

The principal question presented in this case is, whether the personal obligation upon James D. Mitchell to pay his sister this sum of money, resulting from his acceptance of the devise in his favor in his father's will, and his refusal or neglect to execute the release required of him, (assuming that he did refuse or neglect to do so,) is so far obligatory upon him as to render his personal estate in the hands of his administrator liable, though the property charged with the payment of it has devolved by law upon the party to whom the payment was to be made?

The plaintiff's case, as it appears to me, does not come very strongly recommended to the favorable consideration of the Court. By the events which have occurred, she has become the owner in fee of the property given by the will to James D. Mitchell, and in respect of which this burden was imposed upon him. She has, also, by his death, if not before, become the owner of the Davidson estate, the refusal or omission to relinquish which constitutes the ground of the personal claim against him, and I am strongly inclined to think that there is admissible evidence in the record of the former cause, and which, by agreement, is made evidence here, as if taken under a commission in this cause, that she did enjoy the benefit of that property during his lifetime. At all events, I think it cannot be doubted that her brother always intended, and even attempted, to comply with the directions of his father's will in this regard, and consequently that he never