

tention, that the same be charged on the three shares of my real estate, so as * above devised to my daughters Bailey, Martin and Lee, in the first instance, in order to enable them to **171** be manumitted at all events, and to enable my wife and daughters to receive their legacies also; my dear wife is also to have the one-third of the annual income of my property situate on Baltimore and Calvert streets."

This will was proved in the usual form by the subscribing witnesses on the 8th of January, 1806, after which the following notes were addressed to the Orphans' Court. "Being appointed by Charles Rogers, deceased, one of his executors and trustees to his estate, I decline from serving. Given under my hand this 18th day of January, 1806, Nicholas Hopkins." "To the Orphans' Court for Baltimore County: Baltimore, 21st January, 1806. I hereby renounce my right of acting as executor or trustee under the appointment in the will of the late Mr. Charles Rogers. William R. Smith." "Whereas I have seen the last will and testament of my friend Charles Rogers, deceased, by which I am appointed one of his executors, and one of the trustees to his estate; but finding myself very infirm and of great bodily weakness, am under the necessity of declining to act in either capacity. Given under my hand at Baltimore, this 11th day of January, 1806. John Merryman. William Buchanan, Register."

The plaintiffs further stated, that the trustees, Merryman and Smith, had refused to take upon themselves the trust proposed to be confided in them by this will; and as there was no provision, made by the testator, for having the trusts executed by one trustee alone; *Co. Litt.* 113, a; *Ram. on Assets*, 76; 1828, ch. 174; 1831, ch. 311, s. 11; nor any compensation allowed to all the trustees, or to the one trustee, Hopkins, who was willing to undertake the trust; the bill prayed, that Hopkins might be authorized to act alone; and that he might be compensated for his trouble.

The defendants Merryman and Smith, by their answer admitted the facts as set forth, renounced all right to act as trustees, and left the matter to be disposed of by such decree as might be deemed proper.

KILTY, C., 27th February, 1806.—Decreed, that Nicholas Hopkins be appointed trustee for the purpose of carrying into effect the will of Charles Rogers, deceased, in as full and ample manner as the defendants Merryman and Smith, and the plaintiff Hopkins were directed and empowered by the will of the deceased: provided, that Hopkins, before he acts as such, files with the * register a bond to the State with surety to be approved by the Chan- **172**