

KILTY, C., 12th September, 1810.—It is ordered that the said report and statements be confirmed; but before any application of the balance can be made, it is necessary for the Court to be informed of the situation of the heirs, to whom their proportions ought to be paid, and their separate receipts, according to the will; although it is stated by the trustee, that, they conceive, they have nothing to do with the business. The trustee is directed to report to the Chancellor the names, situation, and places of residence of the heirs; and any further knowledge which he may have obtained as to the debts, and the means of paying them; and the object, and the present situation of the suit mentioned by him.

The trustee Vincent reported, in obedience to this order, that the testator Charles Rogers left, at the time of his death, the following children and devisees, namely, Sarah wife of Henry E. Bailey, Catharine wife of John Diffenderffer, who were then living; Ann wife of Alexander Martin, who died without issue about the 4th of May, 1807, after having by will given a legacy to her husband's mother, and devised her estate to her husband's daughter, who then resided in Massachusetts; and Mary the wife of George Lee, who by her will devised her estate to her husband, who was then living in Baltimore, died leaving no child. That Sarah the widow of the testator was then dead, after having by will bequeathed several legacies; but what debts she owed, or what estate she left, except as before reported, this trustee could not say. That the debts of Charles Rogers had been all paid, that came to the trustee's knowledge; except a small account in settling of which there had been some little difficulty, but of small consequence. That the devisees Bailey and wife, and Diffenderffer and wife instituted a suit in Baltimore County Court claiming the whole estate, after the death of Ann Martin and Mary Lee as vested in them, under the will of Charles Rogers; and that suit was determined by said Court in favor of Mrs. Bailey and Mrs. Diffenderffer by the opinion of the Court, that the estate of said Rogers is vested in them * under this will, upon the death of Mrs. Martin and **175** Mrs. Lee. Such this trustee has understood to be the nature of the said action and the judgment of the Court; from which an appeal was made, and the record now remains in the Court of Appeals for trial there. That the money of the estate in this trustee's hands, he is and has been ready to pay over as his Honor shall direct, as well the part audited to the widow, as that to the heirs; who are satisfied on that subject, waiting only for a decision in the Court of Appeals. That the balance due Sarah Rogers, at her death, this trustee has been ready and willing to pay to the executors, and would have paid; but the heirs, although not disputing the account, conceived the money due on that account ought not to be paid until the determination of the Court of Appeals.