

tioned in the order of March 25th, 1815, the auditor may proceed to examine the reports and vouchers, without waiting for the transcript, and report thereon, giving notice to the former and present trustee.

In obedience to this order the auditor, on the 23d of December, 1818, stated and reported several accounts as required for performing which service, his legal fees amounted to \$84. After which, the auditor, by his petition, stated, that the former trustee Vincent, and John Diffenderffer, who had been recognized by the Court as trustee in the room of Vincent, although no order for his appointment appeared among the papers, had both of them neglected and refused to pay his fees, although Diffenderffer had always had in his hands funds of the estate to a large amount. Whereupon the auditor prayed, that Diffenderffer might be ordered to pay, &c.

KILTY, C., 18th October, 1819.—Ordered that John Diffenderffer pay to the auditor the sum of \$84, on or before the 10th day of November next, or shew cause to the contrary; provided, that a copy of the petition and of this order be served on him before the 28th instant.

These are all the proceedings which appear to have been had in the case of *Rogers v. Merryman*, when Winder and wife instituted the suit against John Diffenderffer and others.

These plaintiffs, Winder and wife, by their bill, stated that Charles Rogers, after having made his will, as before set forth, died, * leaving a large estate, and four children his devisees, Sarah Ann, Mary and Catherine; that the trustees appointed by the will of the testator, all refused to take upon themselves the trust, and were then dead; that no trustee to carry into effect the object of the will had ever been appointed by any competent authority; that Sarah married, and afterwards died, leaving the plaintiff Araminta, her only child and heir; that Ann and Mary had married, and afterwards died without issue; that Catherine married the defendant John, and was since dead, leaving these infant defendants her children, and heirs-at-law; that after the death of Ann and Mary, the defendant John Diffenderffer took the property so devised, into his possession, as the estate of the three infant defendants, his children, and had ever since received the rents and profits thereof. Whereupon these plaintiffs by their bill prayed, that a division of the estate, so devised might be made among the legal representatives of the devisees of the testator, Charles Rogers, according to their respective interests; and also, that the defendant John Diffenderffer might account for