

the rents and profits; and that they might have such other relief as the nature of the case may require, &c.

The defendant, John Diffenderffer, by his answer, admitted, that Charles Rogers had made his will and died, leaving a large estate, and four daughters as set forth in the bill; that Sarah had died leaving the plaintiff Araminta, her only child, who had married the other plaintiff William; that this defendant had married Catherine, who was then dead, leaving the three other defendants, her children and heirs, who were all then minors; that the trustees, appointed by the testator, Charles Rogers, had refused to undertake the trust, in consequence of which, an application had been made to this Court, and a trustee appointed, as set forth in the proceedings in the case of *Rogers v. Merryman*; that this defendant had, from time to time, received from the trustee, Vincent, sums of money, on account of the distributive share due to his wife; and there remained a large balance due to her; whilst the other parties received considerable sums more than was due to them; that Ann Martin died on the 5th of May, 1807; and Mary Lee on the 21st of January, 1808, both without issue; that, at the request of the trustee, Vincent, this defendant had taken possession of the property on Calvert and Baltimore streets; and also of sundry ground rents in the City of Baltimore, which he had a right to do under the will, after the death of Ann and Mary, whereby the estate survived to his children, the heirs of Catherine; that he \* had received from the estate, from the 16th of January, 1815, to the 28th of November, 1825, deducting the amount **178** paid for taxes, repairs, &c., the sum of \$24,149.35½, for all which he was ready to account; that he had not taken possession of any other part of the testator's estate, or received any other rents and profits than those specified; and that the property devised to Sarah was more than her equal proportion of her father's estate.

The three infant defendants put in their answers by guardian *ad litem*, in which they stated, that they had no knowledge of the matters set forth in the bill; and prayed, that their interests might be protected, &c.

To these answers the plaintiffs put in a general replication; and commissions were issued to take testimony; under which the depositions of sundry witnesses were taken and returned on the 7th of September, 1827. After which, the defendant, John Diffenderffer, with the consent of parties, was allowed to amend his answer; in which amended answer he stated, that the devisee, Ann, with her husband, Alexander Martin, had executed a conveyance of the property devised to her, whereby she had docked the estate tail therein given to her; so that William Hitchborn became seized thereof in fee simple, in trust for her sole and separate use; after which she had, by her last will devised the property as therein specified, and died.