

BLAND, C., 7th April, 1828.—This case standing ready for hearing, and the solicitors of the parties having been heard, the proceedings were read and considered.

After an attentive consideration of the will of the late Charles Rogers, upon the true construction of which this controversy turns, it is my opinion, that he devised the property, mentioned in the complainants' bill, to his daughters for life, with remainder to their children in fee simple; and upon the death of any one daughter, without children, then her share was to go to the survivors and their children. There is nothing in this will which shews it to have been the intention of the testator, that his daughters, or their issue should take an estate tail only. All four of his daughters are now dead, and two of them, Ann and Mary, have left no issue; consequently, the undivided shares of the property, in the proceedings mentioned, which were devised to the late Ann and Mary, must pass, in two equal parts, to the testator's grandchildren, the one-half part thereof to the plaintiff Araminta, as the daughter and sole heir of the late Sarah; and the other half part thereof to be equally divided among Amelia Diffenderffer, Michael **179** Diffenderffer * and Charles Rogers Diffenderffer, as the children and heirs of the late Catherine. The bill prays for a partition of the estate, and for an account of the rents and profits. These prayers will be granted.

Decreed, that there be a partition of the lands in the proceedings mentioned; and to the end, that this Court may be enabled to make a just partition thereof; it is ordered, that a commission issue to James Mosher, Benjamin C. Ridgate, Henry Didier, William F. Small, and Joseph Barling, authorizing them or any three of them to enter upon, walk over and survey the said land; and to divide the same, if it shall admit of division, according to the rights and interests of the respective parties; that is to say, two-thirds of the whole of that which was devised to the said late Ann, Mary and Catherine, as in the proceedings mentioned, to be laid off as the portion of those who are to take on the death of the said late Ann and Mary, without issue; which two-thirds is to be divided into two equal parts, one of which is to be allotted to the plaintiff, Araminta; and the other half of the said two-thirds, together with the said one-third of the whole, as the portion to which the children of the late Catherine are entitled, to be divided into three equal parts; one of which shall be allotted to the said Amelia Diffenderffer, one other third part thereof to the said Michael Diffenderffer, and the remaining third part to the said Charles Rogers Diffenderffer, having regard to quantity and quality; and the said commissioners be directed in the commission to make out a plot and certificate of the said land, and of the divisions thereof, and an accurate description of the same, and of the several parts there-