

BLAND, C. 7th October, 1829.—This case standing ready for hearing, on the exceptions to the auditor's report, and for final hearing on the decree to account, the solicitors of the parties were fully heard, and the proceedings read and considered.

I take it to have been finally settled by the judgment of the Court, in the case of *Rogers v. Merryman*, to which the widow and the four daughters of the late Charles Rogers, were all parties; first, that the debts of the testator had been all properly and correctly paid by the trustee, Vincent, and that a share of the surplus left, after their payment, having been ordered to be paid to Catherine Diffenderffer, who had been a party to that suit, before her marriage, is conclusive upon her, and those claiming under her; because, so long as those orders of the 12th of September, and 15th of December, 1820, remain in full force, and they are not now revisable, she, or any one claiming under her, cannot be permitted, in any way, to question the correctness of the manner in which the debts of Charles Rogers, deceased, were paid, which had been so distinctly noticed, considered, and confirmed by those judgments of the Court. And in the next place, that it has been finally determined by the judgment of this Court, as indicated by the orders of the 25th of March, 1815; the 8th of July, 1816, and the 18th of October, 1819, that this defendant, John Diffenderffer, \* was to be considered thenceforward as a trustee charged with the execution of the will of Charles Rogers, deceased; 198 and that he had succeeded to that trust, under the authority of this Court, immediately after the resignation of the late Samuel Vincent, on the 23d of November, 1814.

These positions, which have been established in that case, appear to me to furnish a very satisfactory answer to the claim of the representatives of Catherine Diffenderffer, deceased, to be substituted for and allowed to take the place of the creditors of Charles Rogers, deceased, on the ground of their having been improperly paid with their funds; and upon that ground to have certain sums withheld for their use from the distribution now about to be made; and also to the objection, that John Diffenderffer is here claiming only as the natural guardian of his own children and in opposition to the plaintiffs; since those proceedings shew, that he stands here as a trustee, so constituted by the authority of this Court, for the benefit of all the devisees under the will of Charles Rogers, deceased.

But, passing over all the proceedings and final adjudications in the case of *Rogers v. Merryman*, let us return to the decree, in this case of the 7th April, 1828, by which the defendant, John Diffenderffer, has been called upon to account for the rents and profits for the whole time the property has been, or may remain in his possession. The statements reported by the auditor, and the exceptions of the parties present two distinct subjects for consideration;