

defendant Donaldson, had not yet accounted for the sums received by him; and that the personal estate together with so much of the real estate as had been devised to be sold was wholly insufficient to pay the debts of the testator. Whereupon it was prayed, that the executors, and the several trustees might be ordered to account for the property and the several sums of money disposed of and received by them; and that so much of the real estate of the testator, as had been devised to these defendants, his children and grandchildren, as would be sufficient for the payment of his debts might be sold for that purpose, &c.

The defendant Charles Campbell, by his committee, James Cunningham, answered and admitted the matters as set forth, so far as they were within his own knowledge; but he insisted, that all the lands devised to be sold should be first disposed of before any other portions of the real estate should be ordered to be sold; and also, that no part of that which had been devised to him the lunatic, and which constituted his only means of support should be sold, until a full account had been taken of the funds which had passed into the hands of the trustees.

The infant defendants, children of the defendant Catherine, answered by their guardian *ad litem*, and admitted the circumstances as set forth in the bill; but they insisted, that the lands devised to be sold, should be first applied in satisfaction of the debts; and they also insisted, that the Act authorizing the Chancellor to appoint a trustee to mortgage the estate of the testator, and the proceedings under it, having passed with the full knowledge of the plaintiffs, and without any opposition from them or any other of the testator's creditors, this Court had no power to set aside and disregard that law, and the decree under it; and to order a sale of the estate as if no such proceedings had been had.

The trustee, Donaldson, put in his answer, in which he admitted all the matters set forth so far as he was concerned. The other defendants having been summoned, and having failed to answer, an interlocutory decree was passed against them, under the Act of Assembly; 1820, ch. 161, s. 1; and a commission to take evidence was issued and returned in the usual manner.

**220** \*The solicitors of the parties, on the 25th of July, 1829, filed an agreement in the following words: "It is agreed, that this cause shall remain in its present state until September Term; and unless some other agreement shall be entered into before that time, that such decree shall then be entered as may appear agreeable to the course of the Court, upon the case made by the bill and answer now filed." No other agreement having been entered into, the case was submitted, with a consent by the solicitors of the parties, except the defendant McHenry, that a decree, as proposed, should be passed.