Iglehart, he had been summoned as a defendant, and the suit had been revived against him accordingly.

Upon these facts the plaintiffs have prayed for an account; that the land might be sold; and that the proceeds thereof might be applied to the payment of their annuity with costs, and the balance so invested as to stand as an available fund to meet future instalments of said annuity; or, that such other relief might be given to them as to the Court might seem meet.

It will be seen by adverting to the will of William Duncan deceased, that he has expressly declared, that the annuity should be paid out of the rents and profits of the estate; thus unequivocally shewing it to have been his intention, that it should be charged altogether and exclusively upon that estate; and that his personalty should be in no way liable; *Elliot* v. *Hancock*, 2 *Vern.* 143; *Attorney-General* v. *Downing*, *Amb.* 571;—consequently, it could not have been necessary for the plaintiffs to say anything of the deceased's personal estate; or to have made his executrix or administrator a party to this suit.

The subject claimed by these plaintiffs is an annuity charged upon, and payable out of the rents and profits of a certain real estate; which real estate, so charged, was devised to these infant defendants William and Caroline. These facts are sufficiently stated in the bill, and are more fully shewn by the last will of the testator, which is exhibited as a part of it. The bill further states, that after the death of the testator, Deborah, who was the mother of the infant defendants William and Caroline, paid the plaintiff Anna Maria one year's annuity; and that the defendant Robinson, who is their guardian, also paid the plaintiff Anna Maria one year's annuity, under her father's will. Here then is a sufficient statement of the fact, that these infant defendants, by their mother, and afterwards by their legal guardian, took the real estate so devised to them; and actually, in consequence thereof, paid a part of the annuity so charged upon it.

*The bill, it is true, does not allege that the devisees, or their guardian, received the rents and profits of the land **51** charged with the payment of the annuity. But no such allegation by the plaintiffs was necessary, since it was enough for them to have shewn that the devisees actually took the estate as devised. If they derived no profit from it, it was their own fault; and a matter with which the plaintiffs could have no concern. If the estate charged was wholly insufficient to pay the annuity, they should have disclaimed all right to it; or the fact should have been, in some way, put upon the record by the defendants; which has not been done. But, according to the common law, the mother, as guardian, has an interest in, and is bound to take charge of her ward's estate. *Ratcliff's Case*, 3 *Co.* 38; *Roach* v. *Garvan*, 1 *Ves.* 158; *Mellish* v. *De Costa*, 2 *Atk.* 14; *Smith* v. *Marshall*, 2 *Atk.* 70;