these infants, elect that they shall take entirely under the will of their father, the late William Bowie.

But the one-third of the negroes given by the testator Baruck, upon his death, immediately vested in the rest of the children of his daughter Kitty, to be distributed when they should arrive at age, that is, in these parties, Eliza, Walter, and Kitty. This specific legacy to them was the immediate gift of a fund, with all its produce. The testator William, as their father and natural guardian, might well take and hold these negroes for them; but in doing so he made himself accountable to them for their profits. Consequently, the amount of those profits which had accumulated in his hands, during his life-time, was a debt due from him to them, it was a part of their property in his hands. But it has been in no way disposed of by him; he has not described, or even alluded to it as a part of that mass of property, by the special disposition of which he has especially or impliedly driven them to elect to take under or against his will. On the contrary, considering it as a debt due from him, he has, together with all others of his debts, expressly provided for its payment.

The principles of election arise out of the fact, that a party who has a right to one parcel of property, has another given to him, with an express declaration, or under circumstances which leave no room to doubt that the donor, who has disposed of both intended he should have choice of either; but that he should not be permitted to take both of them. It is no where spoken of as arising out of the circumstance of the testator's being a debtor to his devisee or legatee. In this case the testator William shews that he perfectly understood the extent of his power to put some of his children to an election, by the manner in which he has dis-

625 posed * of his property among them. He carefully describes the several parcels of property, and the various advantages between which they were to make their election; but in speaking of that property and those advantages there is not the slightest reference to the previously accumulated profits of their specific legacy of negroes then in his hands. No property has been given in lieu of those profits, or as a compensation for them; nor has any thing been placed before these parties in competition with those profits. And, therefore, it cannot be inferred that this claim for the profits of those negroes, which had been then received; and were then in hand, were intended to be embraced within the scope of that election which the testator William expected his children to make; for in relation to this doctrine of election, it certainly cannot be so applied as to spell or guess a man out of his property. *Forrester* v. *Cotton*, 1 *Eden*, 532; *Blake* v. *Bunbury*, 1 *Ves. Jun.* 524; *Green* v. *Green*, 19 *Ves.* 667; *S. C.* 2 *Meriv.* 93; *Tibbits* v. *Tibbits*, 4 *Cond. Cha. Rep.* 148; *Hall* v. *Hall*, 1 *Bland*, 130.