

of his daughters, his power over the lands given to his daughters having been exhausted by the devise in fee to them; and the language in the clause creating the trust, so far as these grandchildren are concerned, proceeded upon a mistaken view of his power; for I do not think it can be inferred from this inaccurate reference to the devise to the daughters, that he intended to change the nature of the estates he had previously given them, in clear and technical terms. 1 *Jarman*, 425.

Another consequence would follow the constructions contended for by the counsel for the surviving sons of the testator, which, it appears to me, would be repugnant to his obvious intention; and that would be, that the fee in the lands devised to the daughters, would be undisposed of by the will, and would descend upon his heirs at law. The will was made before the act of 1825, ch. 119, and, therefore, the child or children of the daughters, if they take as purchasers under the will, could take no more than estates for life, which would be placing them in a worse situation than the children of the testator's sons, to whom the remainders of the property devised to their fathers are expressly limited in fee simple. This construction, therefore, would defeat the general intent of the testator, which, though first expressed, shall overrule the particular intent, as is now fully established. 1 *Jarman*, 411, *in the notes*.

My impression, therefore, is, that Harriet, the daughter of the testator, took an estate in fee, in the land which the petition in this case seeks to have sold; and the remaining question is, whether it sufficiently appears; that it will be for the interest and advantage of the parties interested, that it should be sold.

This of course depends upon the proof; and, upon a careful examination of it, I am of opinion, that it does so appear, and, therefore, a decree will be signed for a sale. This decree will provide for a surrender of the lease as proposed; and as the petitioners, Rezin Hammond and others, intervened in this cause, with the leave of the court, the costs of the entire proceedings will be paid out of the proceeds of the sales.

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[No appeal was taken from this decree.]