

that being defendants upon the record, it is doubted whether they are in a position to have their rights adjudicated, and a decree passed in their favor, in case they should, upon the hearing, be held entitled to the property; and they, therefore, pray, that an order may be passed, striking out their names as defendants, and making them plaintiffs, and treating them in the further progress of this cause as occupying that position.

The assent of the complainants having been given to this amendment, an order passed accordingly on the same day.

Afterwards, on the 28th of the following month, three of the defendants filed their petitions, in which, upon the grounds therein set forth, they prayed that the order of the 24th of May might be rescinded, and that the bank should be required, in the prosecution of its claims, whatever they might be, to proceed in the usual mode, and according to the course of the court.

An order then passed for a hearing of the application, and counsel have been heard accordingly.

The object of the bill, as we have seen, was to set aside the first will and deed of Charles T. Ellicott, and that the second will might be established, or, in case the court should consider and pronounce all these instruments invalid, that then, and in that case, it should decide upon the rights of the parties as they might be regulated by the act of descents.

The questions thus presented by the bill, are entirely different from any claim which the Union Bank may have in virtue of the purchase by it, at the sale made by the sheriff, of the interest of Thomas Ellicott.

The plaintiffs charging that the first will and deed are void, upon the ground of the mental imbecility of Charles T. Ellicott, and the imputed frauds of Thomas Ellicott and William M. Ellicott, found their title to portions of the property, first, upon the second will, and secondly upon their right, as heirs at law, if all the instruments should be found to be invalid, and this was the case, which the defendants, who insist upon the validity of the first will and deed, had to meet.