

the same to Mr. Rogers, taking his note therefor, which note, though retained by the testator, she alleged he gave to her, and always, during his lifetime, paid her the interest which accrued thereon.

And the title to this note constituted the third ground of claim presented by the bill, which charged the defendant Davis with having neglected to pay the complainant the rents and profits of the real estate so devised to her, with a failure to make the investment of the \$5,000, or to pay her the interest thereon, and likewise with refusing to deliver her the note of Mr. Rogers, or to pay her the money due thereon. And the bill prayed that the defendant, Davis, might be compelled to account for said legacy, principal and interest, for the rents and profits of the real estate, and that he should be decreed to deliver up for her use, the note in question, and pay the interest which had accrued thereon, and had been received by him, and that if the defendant shall not admit assets sufficient to pay the said \$5,000 legacy, that then an account may be taken of the estate and effects of the testator, and the same applied in due course of administration, and for general relief.

The answer of the defendant, Davis, insists that he has duly and regularly paid to the complainant all the rents she was entitled to, and that he has invested, according to the directions of the will of the testator, all and every sum of money belonging to his personal estate, which the complainant was entitled to have invested for her benefit; and with regard to the note of Rogers, the answer, by way of plea, sets up a proceeding in the Orphans' Court, in which, as the plea avers, an adjudication was made, that said note was the property of the defendant himself.

The cause came on first, to be heard in May, 1851, when, for the reasons then stated, it was decided that the title of the complainant, Mrs. Hitch, to the note in question, could not be maintained, either as a *donatio inter vivos*, or *mortis causa*, and consequently the bill, so far as it sought to recover from the defendant, for or in respect of said note, was dismissed, but in other respects was retained, with liberty to the complainant, by proper proceedings, to make a new party, which