

him to that security. The bill, I am of opinion, must be dismissed, but inasmuch as I think it was not brought without some plausible grounds, and perhaps it was the duty of the plaintiff in his character of trustee, to file it, costs will not be allowed.

S. T. WALLIS,	}	for Complainant.
J. MASON CAMPBELL,		
JOHN NELSON,	}	for Defendants.
CHARLES F. MAYER.		

LEVIN USILTON,	}	JULY TERM, 1852.
vs.		
JOHN FRANCIS USILTON ET AL.		

[CONSTRUCTION OF WILLS—LIMITATION OVER OF PERSONALTY.]

A testator, after bequeathing certain pecuniary legacies to his four daughters, directed that his son *John* was "to hold the farm and have sufficient time to pay off the legacies," and then gave a pecuniary legacy to another son, *Joseph*. HELD—that all these legacies, including that to *Joseph*, are charges upon the real estate devised to *John*, and are to be paid, *pari passu*, out of the proceeds of the sale thereof.

A testator bequeathed to his daughter the sum of two hundred and fifty dollars and two negro slaves, "and in case of her death, without issue, the property to go to her sisters." HELD—that the limitation over is void as to the two hundred and fifty dollars, being after an indefinite failure of issue.

The mere circumstance that the limitation over is to a person *in esse* will not of itself be sufficient, even as regards bequests of personalty, to restrict the words "dying without issue," to mean a dying without issue at the death of the first legatee.

Where the limitation over after a bequest of personalty is if the first legatee dies without "leaving" issue, the word "leaving" restricts the limitation over to a definite failure of issue.

[*Francis Usilton*, by his will, executed on the 5th of February, 1850, devised and bequeathed as follows: "*Item*—I give and bequeath unto my daughter *Francis Philena Reed*, wife of *Geo. R. Reed*, the sum of five dollars."

"*Item*—I give and bequeath unto my daughter *Susan A. Usilton*, the sum of two hundred and fifty dollars, one negro boy named *Sam*, and one negro girl named *Maria*, and in case