

in part," and then bequeathed the "rents, issues, and profits," of a certain house and lot, immediately after his death, to his two surviving children, "the same to be applied towards their support and education."

HELD—

That the intent of the testator, manifest upon the face of the will (construing the will and codicil as one instrument,) was simply to revoke the bequest to his wife, so far as the house was concerned, and to give the rents and profits of it for her life to his two surviving children, leaving the will after her death to operate upon it as upon the residue of his estate.

The will and codicil are to be construed together as one instrument, and are to be reconciled, as far as possible, but if irreconcilable, the codicil, as the last indication of the testator's mind, must prevail.

The devise of the profits of land does not, *ex vi termini*, pass the land, but only furnishes evidence of the intention of the testator that it shall pass, subject to be rebutted, of course, by the manifestation on the face of the will of a contrary intention.

In this case nothing is said in the codicil about disturbing the limitation over to the children and grandchildren, and the will and codicil are easily reconciled by making the latter apply only to and operate upon that part of the will which relates to the wife.

The devise in this case being not of lands, but of their rents and profits, and the intent of the testator being manifest upon the face of the will that the land should not pass, the Act of 1825, ch. 119, does not apply.

That Act applies to devises of lands or real property in general terms, without words of perpetuity, or limitation, and gives the entire estate and interest of the testator, unless by devise over, or by words of limitation or otherwise, a contrary intention is indicated.

[The only question in this case arises from the construction of the will and codicil of Patrick Ward, deceased, executed on the 25th of March, 1831. The will and codicil are sufficiently set forth, in the opinion of the Chancellor. After the death of the testator's widow, the property devised by the will was sold, for the purpose of distribution, under the proceedings in this case, and the representatives of the two surviving children of the testator claimed the entire proceeds of the sale of the house and lot mentioned in the codicil, to the exclusion of the testator's grandchildren mentioned in the will. This claim was disputed by said grandchildren, and the question was presented to the Chancellor, upon exceptions to the Auditor's report and accounts distributing the proceeds.]

THE CHANCELLOR :

This cause having been submitted by the written agreement