

THE CHANCELLOR :

The late Francis J. Mitchell, who died in the month of March, 1825, by his will, dated on the 18th of that month and year, devised and bequeathed to his eldest son, James D. Mitchell, valuable real and personal estates, and the will, after making other dispositions, which do not appear to be material to the questions involved in this case, contains this clause :

“Whereas, my said son, James D. Mitchell, and my said daughter, Sarah E. Mitchell, are, in right of their late mother, who was the daughter of Dr. James Davidson, deceased, entitled as tenants in common to a portion or share of the real, personal, and mixed estate, of which he died seized or possessed. Now, it is my will and desire that my said son, James D. Mitchell, by deed duly executed and delivered, relinquish and release to the said Sarah E. Mitchell his undivided interest in the same estate and property, or in lieu thereof pay to the said Sarah E. Mitchell the sum of five thousand dollars, lawful money, for and with the payment of which said sum of five thousand dollars, in case of his refusal or omission to relinquish and release as aforesaid, I do hereby charge that portion of my estate and property so devised and bequeathed to the said James D. Mitchell for his own use and benefit.”

The bill alleges that James D. Mitchell accepted the devise and bequest to him, and that he omitted or refused to execute a release to his sister, the complainant, as required by the will of his father, and that there consequently devolved upon him a personal obligation to pay the five thousand dollars, which it seeks to recover from his personal representative. James D. Mitchell died in August, 1837, and upon a bill which was filed in the equity side of Charles County Court, in 1838, against his executrix, Elizabeth Mitchell, and which was afterwards amended by making his brother, Henry O. Mitchell, and his infant son, parties, it was decided that as the real estate, called “Myrtle Grove,” which James D. Mitchell took under the will of his father, Francis J. Mitchell, and which was charged with the payment of the five thousand dollars, had descended to the complainant, the charge had become extinct by the union of