

143, and the cases there referred to. And in that case, it was adjudged, that a legacy of \$500 to each of the testator's two grandsons, to be paid by his executor, was not evidence of an intention to charge the real estate in the hands of the devisee with the payment of the legacies, the court in their opinion saying, that the legatees and devisee appear to have been alike the objects of the bounty of the testator, and it not appearing to have been his intention to encumber his lands with the payment of the legacies, and there being no evidence that the executor, who was the devisee of the real estate, had wasted or misapplied the personalty, the legatees were adjudged to have no claim upon the proceeds of the real estate, and, consequently, the personalty being insufficient, they were disappointed.

The case now before this court, it is thought, is not distinguishable in principle from the case referred to. It is the case of a pecuniary legacy not chargeable upon the real estate, and in which the personalty being insufficient, the legatee must bear the loss, having no right to resort to the real estate in the hands of the devisee, who, with himself, is equally the object of the bounty of the testator.

The general rule of marshalling assets, as explained and applied by the Court of Appeals, in the case of *Chase vs. Lockerman*, 11 G. & J., 185, furnishes no authority for throwing these legacies upon the real estate devised, or for compelling the devisees to contribute. Other cases were referred to in the argument, but as they simply reaffirm the rule established in *Stevens vs. Gregg*, and *Chase vs. Lockerman*, it is not thought necessary to cite them.

These views dispose of the first and second claim made by the complainant, and show that, in my opinion, he cannot have recourse to the real estate devised to the testator's two daughters and their children, for the payment of the sums of money bequeathed to him and his brother Hammond Dugan in the 14th clause of the will. These legacies were payable out of the personal estate of the testator, and out of that alone.

The complainant's third claim, as enumerated in his statement filed on the 18th instant, is founded upon the 15th clause