

[The facts of this case are fully stated in the Chancellor's opinion.]

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THE CHANCELLOR :

The merits of this controversy, as I understand them, are decidedly with the plaintiffs, and, therefore, unless some insuperable difficulty shall be found in the legal and technical objections urged by the solicitor for the defendants, an order or decree must be passed in accordance with the prayer of the bill.

It appears by the proceedings, that a Mrs. Ann Maccauley, in November, 1812, executed her last will and testament, by which she gave and bequeathed all her property, of every description, to her friend Gideon White, in trust, for the use of her granddaughter, Ann Higgins, the wife of George W. Higgins, during her natural life, and after her death, all the said property, and its increase, to be equally divided among the children her said granddaughter should leave at the time of her death, share and share alike. And the testatrix further declared it to be her will, that in case her said granddaughter should survive her husband, that then the trust created by the will should cease and determine, and the whole of the property of which the testatrix died possessed, and the increase thereof, should be vested in, and be the sole right, property and estate of her said granddaughter, her executors, administrators and assigns.

The testatrix died in the following year, when the will was duly admitted to probate, and the trustee, White, having refused to assume the trust, and having also renounced the executorship of the will, the Chancellor, on the 16th of May, 1815, upon the petition of Higgins and his wife, passed an order directing that White should assign the trust to Thomas H. Dorsey and Thomas W. Hall, and vesting in them authority to act as trustees under the will, in the same manner as if they had been appointed by the testatrix.

After some further proceedings upon this petition, which it does not appear to me to be necessary to notice particularly,