

with interest, and if he would, shall he not be equally chargeable when he has used it without any such authority? It is no answer to say that Mrs. Higgins was entitled to the use of this property during her life, because the interest on the money expended by the defendant, Higgins, is a part of the use of which she did not receive the benefit, and it must go over with the other increase according to the will.

The question whether Joshua Higgins is so far implicated in the misconduct of the defendant, Richard, as to make him responsible to his co-complainant, James, is a question to be settled between them, but cannot in any way affect the liability of the defendant, Richard.

The Chancellor does not think the plea of limitations can avail the defendant. Mrs. Higgins, during whose life these plaintiffs had no title, did not die until a very short time before this bill was filed. If she had survived her husband, the trust would have ceased, and the property have become her's absolutely. Their right, therefore, was wholly contingent until her death, and, consequently, as it seems to me, limitations could not run against them.

But this is not a case in which these parties are proceeding to enforce actively their claim under the decree of December, 1827. They insist that under the sales made in that case or in the other, in both of which this defendant acted as trustee, he received more than his proportion of the trust fund, and they pray that in consequence of such receipts by him he shall not be permitted to participate in the residue. The principle settled in the case of the *Farmers Bank and Iglehart*, decided at December term, 1846, is considered applicable to this, and as affirming the right of the court to withhold from the defendant, Higgins, his proportion of the fund now to be distributed.

It appears by the testimony of the defendant, Higgins, that he acted as manager of this estate for many years, receiving and appropriating the proceeds of the crops partly to his own use, and partly to the use of the other parties, and I think that in conformity with the decision of the Court of Appeals in the case of *Hatton vs. Weems*, 12 *Gill & Johns.*, 83, he is entitled