

Under the commissions which have been issued for the purpose, a vast mass of evidence has been collected, the effect of which has been very fully and ably argued by the counsel of the parties, as has also been the construction which should be put upon the will of William Spencer, which lies at the foundation of the controversy.

It is insisted, upon the part of the complainants, that the value of the estate of the testator, William Spencer, should be ascertained at or about the year 1823, the period at which he supposed his debts might be paid, and that they are entitled to two twelfth parts of that value, irrespective of any debts which may have then or may now remain unpaid. That the estimate of the value of the estate of the testator, spoken of in his will, was to be made without regard to his debts, be they great or small, and that these complainants, together with the children of Isaac Spencer, are entitled to be paid their aliquot parts of that estimate when they should attain the age of twenty-one years, though the debts of the estate should exceed in amount the value of his entire estate.

The argument in support of this proposition is, that the language of the will not only makes the sums to be paid to these legatees a charge upon the estate, but by accepting the devise, Isaac Spencer, the devisee, made himself personally responsible, and that being so responsible, he must pay though he loses money. That a devisee who takes and enjoys an estate under a devise like this, must comply with the condition though the value of the property is less than the charges upon it.

It is a general rule, certainly, that when lands are devised, charged with the payment of a legacy, and the devisee accepts of the devise, he becomes personally and absolutely liable for the legacy, and consequently, whether the estate is adequate or not to the payment of the legacy is immaterial. By accepting such a devise, the legacy becomes the personal debt of the devisee, and he must pay it, though the property devised to him be of less or greater value. *Glen and wife vs. Fisher*, 6 *Johns. Ch. Rep.*, 33; *Birdsall vs. Hewlett*, 1 *Paige*, 32; *The Attorney General vs. Christ's Hospital*, 3 *Brown's Ch.*