

*Rep.*, 165; *Messenger vs. Andrews*, 3 *Eng. Cond. Chancery Rep.*, 761.

But it seems to the Chancellor, that this case is clearly distinguishable from all those which have been cited in support of the proposition contended for. In all of them real estate was devised upon condition that the devisees should pay the plaintiff certain pecuniary legacies of *ascertained amounts*, and by accepting the devisees became personally bound, upon the principle that he who takes a benefit under a will must conform to all its provisions, and set up no rights inconsistent with them. But this will presented no such condition to the devisee, Isaac Spencer. It did not say to him you shall have my estate, real and personal, upon condition that you pay the complainants and the other parties interested certain specified sums of money. Its language is, "after all my debts are paid, you are to call in two discreet persons (consulting if you please the Orphans Court as to the persons) to make an estimate of the real value of all my estate, real and personal," and then, at a certain period, that value so ascertained was to be paid by the devisee in equal portions to the complainants and certain other persons described in the will. It is true the testator expressed an opinion that his debts could be paid at a very early day, without selling any portion of his estate, but still the estimate of the value was to be made after the payment of the debts, and it was only what should remain after such payment that was to be valued and paid to the complainants and the other parties.

The terms employed by the testator in effect are these: you are to pay my debts first and then you are to cause a valuation of my property to be made, and the amount of such valuation you are to pay to certain parties in the proportions designated by me. It seems impossible to say that by accepting such a devise as this, Isaac Spencer became bound to pay the entire value of the estate of William to the complainants and others, without regard to the debts. If such had been the intention of the testator, and if he had designed to put any such alternative to his devisee, why not direct a valuation to be