

HALL v. HALL.

Wherever a testator devises a part of his estate to one who has a claim upon it independently of him; it is a settled principle of equity, that the devisee shall not be allowed to disappoint the express or obvious intention of the testator by taking both; but shall be put to his election to take the one or the other.

The mode of reviving a suit in equity, according to the act of 1820, ch. 161, which had abated by death. But that act being cumulative, the party may revive either in that mode or by bill. The new mode of reviving applies to no case, except that of a devisee, where a proper bill of revivor will not lie; nor does it apply to an abatement by marriage; or to an abatement after a decree.

This bill was filed on the 11th of September, 1816, by *William White Hall*, against *William Hall* and *Edward Hall*, as the executors of the late *Thomas Hall*, and against *George W. Hall* and others, as his children and legatees. The object of the bill was, to recover a legacy given by the deceased to the plaintiff; and the defence made by the answers of the defendants was, that the plaintiff, who claimed as legatee under the will, had taken and held certain lands as heir in tail in opposition to the will; and therefore ought not to be allowed to sustain this suit for the legacy.

After this bill was filed, the plaintiff died, and *Elizabeth Hall*, his administratrix, by her petition prayed to be admitted as plaintiff in his place.

10th December, 1823.—*JOHNSON, Chancellor*.—Ordered, on examining this application and the accompanying exhibits, that the petitioner be, and she is hereby admitted a complainant, and authorized to conduct the suit; in doing which, the rules laid down by my predecessor, in the case of *Labes v. Monker* at July term, 1821, must be pursued.(a)

(a) *LABES v. MONKER*.—This bill was filed on the 8th of June, 1820, by *James Labes*, against *William Monker* and *John C. S. Monker*, to set aside a conveyance of a certain chattel real, made by the defendant *William* to the defendant *John*, on the ground, that it had been fraudulently made to defeat a judgment at law obtained by the plaintiff against the defendant *William*; upon which judgment the plaintiff had issued an execution, and had it returned without its having been delivered to the sheriff; after which he had issued another *fiery facias*, upon which the sheriff had returned *nulla bona*. The plaintiff, by his bill, prayed, that the deed might be declared void; and, that he might be relieved according to the equity and nature of his case.

The defendants were summoned, and both of them appeared, but failed to answer the bill. After which the solicitor of the plaintiff came into court, and suggested his client's death, and moved, that his legal representatives might be made parties.