

had received from the estate, from the 16th of January, 1815, to the 28th of November, 1825, deducting the amount paid for taxes, repairs, &c. the sum of \$24,149 35½, for all which he was ready to account; that he had not taken possession of any other part of the testator's estate, or received any other rents and profits than those specified; and that the property devised to *Sarah* was more than her equal proportion of her father's estate.

The three infant defendants put in their answers by guardian *ad litem*, in which they stated, that they had no knowledge of the matters set forth in the bill; and prayed, that their interests might be protected, &c.

To these answers the plaintiffs put in a general replication; and commissions were issued to take testimony; under which the depositions of sundry witnesses were taken and returned on the 7th of September, 1827. After which the defendant *John Diffenderffer* with the consent of parties, was allowed to amend his answer; in which amended answer, he stated, that the devisee *Ann*, with her husband *Alexander Martin*, had executed a conveyance of the property devised to her, whereby she had docked the estate tail therein given to her; so that *William Hitchborn* became seized thereof in fee simple, in trust for her sole and separate use; after which she had, by her last will devised the property as therein specified and died.

7th April, 1828.—BLAND, Chancellor.—This case standing ready for hearing, and the solicitors of the parties having been heard, the proceedings were read and considered.

After an attentive consideration of the will of the late *Charles Rogers*, upon the true construction of which this controversy turns, it is my opinion, that he devised the property, mentioned in the complainants' bill, to his daughters for life, with remainder to their children in fee simple; and upon the death of any one daughter, without children, then her share was to go to the survivors and their children. There is nothing in this will which shews it to have been the intention of the testator, that his daughters, or their issue should take an estate tail only. All four of his daughters are now dead, and two of them, *Ann* and *Mary*, have left no issue; consequently, the undivided shares of the property, in the proceedings mentioned, which were devised to the late *Ann* and *Mary*, must pass, in two equal parts to the testator's grand-children, the one-half part thereof to the plaintiff *Araminta*, as the daughter and sole heir of the late *Sarah*; and the other half part thereof to be equally divided among *Amelia Diffenderffer*, *Michael Diffenderffer*