

was to be considered thenceforward, as a trustee charged with the execution of the will of *Charles Rogers*, deceased ; and that he had succeeded to that trust, under the authority of this court, immediately after the resignation of the late *Samuel Vincent*, on the 23d of November, 1814.

These positions, which have been established in that case, appear to me to furnish a very satisfactory answer to the claim of the representatives of *Catharine Diffenderffer* deceased, to be substituted for and allowed to take the place of the creditors of *Charles Rogers* deceased, on the ground of their having been improperly paid with their funds ; and upon that ground to have certain sums withheld for their use from the distribution now about to be made ; and also to the objection, that *John Diffenderffer* is here claiming only as the natural guardian of his own children and in opposition to the plaintiffs ; since those proceedings shew, that he stands here as a trustee, so constituted by the authority of this court, for the benefit of all the devisees under the will of *Charles Rogers* deceased.

But, passing over all the proceedings and final adjudications in the case of *Rogers v. Merryman*, let us return to the decree, in this case of the 7th April, 1828, by which the defendant *John Diffenderffer* has been called upon to account for the rents and profits for the whole time the property has been, or may remain in his possession. The statements reported by the auditor, and the exceptions of the parties present two distinct subjects for consideration ; *first*, the claims and pretensions of the representatives of the late *Catharine* ; and *second*, the liabilities of and allowances to this defendant *John Diffenderffer*.

It has been urged, that the debts of the late *Charles Rogers* were paid, contrary to the directions of his will, by the trustee *Vincent*, out of rents and profits which ought to have gone to the late *Catharine* ; and, consequently, that she or her representatives, to the extent of the rents and profits to which she was entitled, and which had been so misapplied, ought now to be allowed to take the place of those creditors as against these funds in the hands of this trustee, and which are now about to be distributed.

This stand is taken upon the ground of substitution ; and it can only be maintained by means of those principles by which a surety, or one who has been placed in the condition of a surety is allowed to take the place of the creditor against the principal debtor ; or by the help of those principles by which securities or assets are mar-