

\$10,000; and the property devised to *Philip H. Mewburn*, shall be estimated to be worth \$10,000. It is also agreed, that no advantage shall be taken of any alleged defect in the bill, in not charging, that *Charles* and *Harriet Hammond*, are entitled to have their pecuniary legacies raised by contribution.'

22d December, 1829.—BLAND, *Chancellor*.—This case standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

It has been urged, that the sums of money given to *Charles* and *Harriet* are merely pecuniary legacies, payable only out of the surplus after debts and specific legacies. It is alleged in the bill and admitted, that the personal estate of the testator is inadequate to pay his debts; hence it follows, that those sums of money given to *Charles* and *Harriet*, cannot be paid, unless, like the devises and bequests of the original will, they are to be considered as specific legacies, only chargeable with a proportional contribution for the payment of the debts, which the funds appropriated for that purpose by the testator, was insufficient to pay.

In questions of this kind, it is declared by all the authorities, that the intention of the testator is always to prevail, unless it contravenes some established rule of law. It is evident, from the general character of the testamentary instrument under consideration, that the late *Philip Hammond*, by his will, had designed to dispose of his whole estate, of every description, in a very especial manner. His wife, each one of his children, and his grandson, are named and provided for, by a donation of what he manifestly had estimated as a due proportion of his property. And each share is given, in a manner, so carefully guarded, as clearly to shew, that the whole subject had been pondered over and well considered. Whether each one of the dividends, so made, was, in fact, of equal value is of no importance, as regards the present question. After the testator had thus established the proportions, in which the first and chosen objects of his bounty should take, he then gives to five of his slaves their freedom, with small pieces of property for their support during their lives; and then, in conclusion, he provides for his creditors: but, in doing so, he cautiously guards against disturbing the equilibrium he had established among his devisees, by expressly declaring, that in case the fund, so set apart for his creditors, should not be sufficient, 'that the property devised to my sons and daughters, and to my grandson, shall contribute in equal proportion, to the discharge of my debts.'