The bill, it is true, does not allege that the devisees, or their guardian, received the rents and profits of the land charged with the payment of the annuity. But no such allegation by the plaintiffs was necessary; since it was enough for them to have shewn, that the devisees actually took the estate as devised. If they derived no profit from it, it was their own fault; and a matter with which the plaintiffs could have no concern. If the estate charged was wholly insufficient to pay the annuity, they should have disclaimed all right to it; or the fact should have been, in some way, put upon the record by the defendants; which has not been done. But, according to the common law, the mother, as guardian, has an interest in, and is bound to take charge of her wards' estate. (*f*) And by the common law, as well as by positive legislative enactment, a guardian of an infant is bound immediately to take possession of his ward's real and personal estate; to manage it to the best advantage; and to account for its rents and profits. (*g*) It could not, therefore, be necessary for these plaintiffs to aver, as a foundation of their claim to relief, that the guardians of these infant devisees had received the rents and profits of their estate; or, in other words, that they had performed their legal duty; since that must be presumed; and a guardian himself surely could not be permitted to rely upon the fact of his own negligence for his own benefit. (*h*)

(*f*) Ratcliff's case, 3 Co. 38; Roach *v.* Garvan, 1 Ves. 158; Mellish *v.* De Costa, 2 Atk. 14; Smith *v.* Marshall, 2 Atk. 70; The King *v.* Oakley, 10 East. 494; 2 Fonb. 238; 1 Blac. Com. 461.—(*g*) Co. Litt. 88; 2 Fonb. 243; Hay *v.* Conner, 2 H. & J. 347: Brodess *v.* Thompson, 2 H. & G. 120; 1798, ch. 101, Sub. Ch. 12; (*h*) Gregory *v.* Mighell, 18 Ves. 331; Parker *v.* Mackall, pos. note.

Cox *v.* Callahan.—This bill was filed on the 15th of December, 1790—It states that the plaintiff, while an infant, became seized of a certain tract of land as devisee of his late father; that his mother was entitled to dower therein; that she married John Railey, who afterwards became the guardian of the plaintiff; that Railey held the land to which the plaintiff was entitled, and took the rents and profits, but never paid or accounted for them; that he made his will, and appointed the defendant Chaires his executor, who received the then crop of the plaintiff's land; that the lands of which John Railey died seized, descended to his heir Charles Railey, who devised them in part to the defendant Benton, and in remainder and wholly to the defendant Callahan, whom he appointed his executors and died; that John Railey's personal estate was insufficient to pay his debts; and that neither he, in his lifetime, nor any of the defendants since, have paid or accounted to the plaintiff for the rents and profits of his lands. Prayer for an account, and for general relief.

The defendants answered, proofs were taken, and the case was thereupon brought before the court.

25th January, 1793.—Hanson, *Chancellor*.—This cause standing ready for hearing, and being submitted to the Chancellor without argument, the bill, answers,