

this court to add, that they understand the judge below as releasing Anna M. Ogle, as executrix of Benjamin Ogle, from responsibility for such proceeds of the real estate as have been accounted for and paid over by him, or brought into the Court of Chancery, in pursuance of the orders of that court, and the cause is remanded to the Chancery Court."

GEORGE W. SPENCER AND OTHERS

vs.

WILLIAM A. SPENCER AND JOHN
SPENCER, EXECUTORS OF
ISAAC SPENCER AND OTHERS.

SEPTEMBER TERM, 1847.

[CONSTRUCTION OF WILL—LIMITATIONS.]

A TESTATOR devised all his estate, real, personal and mixed, to his brother in fee, "on these terms and conditions," viz. "after all my debts are paid, he is to call in two discreet persons to make an estimate of the real value of all my estate," and then adding to his own children two sons of the testator's deceased brother, and a son of his niece, he is to ascertain "what my estate will divide into," and pay to each of the three last named parties on their arrival at twenty-one "a sum that will put them each on a footing with his own children." HELD—

- 1st. That the estimate of his property is not to be made irrespective of the debts of the testator, but exclusive of them, and by accepting this devise, the testator's brother did not become personally bound to pay the legacies above directed whether the estate was sufficient to pay its debts or not.
 - 2d. The acceptance of this devise by the testator's brother, did not operate as an extinguishment of a debt due by the testator to him, and the legatees have no right to plead the statute of limitations against his claim, either as to the real or personal estate, he alone having the right to interpose this plea to claims against the testator.
- As a general rule, where lands are devised charged with the payment of a legacy, and the devisee accepts the devise, he becomes personally liable for the legacy, and must pay it whether the property devised be of less or greater value.
- Where an executor is himself the creditor of the estate, limitations will not bar his claim, for he cannot institute suit against himself for the recovery of the debt.
- By our testamentary system, the executor or administrator alone can plead limitations to claims against the personal estate of the deceased.
- A trust in a will to pay debts, against which the statute of limitations has run at the death of the testator, will not revive them; but the trustee alone has the authority to plead it.