

THE CHANCELLOR :

In the will of the late Ignatius Semmes, who died in the year 1843, there is the following clause : "I give, and devise to Walter Mitchell, Esquire, my farm called Rose Hill, together with all the rest of my negroes," (some being manumitted by a previous clause,) "stock of every description, and plantation utensils—in trust, to and for the following uses and purposes, that is to say : the income arising therefrom, to be applied to the mutual benefit of my uncle, William Holmes, during the life of my said uncle, and my aunt Sarah Floyd ; and after the death of my said uncle, to the mutual benefit of my aunt Sarah Floyd, and her children ; and after the death of my said aunt Sarah Floyd, to the use and benefit of the children of my said aunt Sarah Floyd, until the youngest shall arrive at the age of twenty-one years ; and then, I will, and devise the said farm, called Rose Hill, together with the rest of the property, so as aforesaid left in trust, to the children of my aunt Sarah Floyd, to them, and their heirs forever, share and share alike. And for his care and trouble in the execution of the said trust, I give to the said Walter Mitchell, ten per cent. upon the whole amount of property, which may come into his possession as trustee."

Mr. Mitchell, who was also appointed executor of the will, assumed the execution of the trust, and having proceeded for some time in the discharge of his duty as trustee, and having passed in the Orphans Court his final account as executor, filed his bill in this court on the 7th of April, 1847, making the cestuis que trust parties, and asking the aid and direction of this court, in the administration of the trust.

There does not appear to be any controverted fact in the cause, the questions presented for the opinion of this court, which depend upon the true construction of the will, being first, with regard to the rights of the cestuis que trust—and, secondly, as to the compensation which the trustee may be entitled to, for his risk and trouble in the performance of his trust.

The first question, relates to the proportions in which the income of the trust estate shall be divided ; and upon that, I am