

THE CHANCELLOR :

The exceptions to the report of the Auditor, of the 20th of December, 1853, and the accounts, C. and D., therewith submitted, standing ready for hearing, and having been argued on the part of some of the legatees of *Jane Blake*, the same, together with the proceedings in the cause, have been read and considered.

The only question of importance is whether the annuities bequeathed by the testatrix to her sister and niece, and the children of her niece, are to be paid out of the principal of the trust estate, or its income, which it is apparent is inadequate for that purpose.

With every proper disposition to give to these annuitants, who are represented to be very needy, all the relief to which, upon a fair construction of the will they are entitled, I have come to the conclusion, that by directing the annuities to be paid out of the capital of the estate, I should break up the entire scheme of the will, and defeat the leading object of the testatrix. It is clear, beyond question, that the income of the estate is totally inadequate to pay the annuities now due, and to become due, and that if the sums now payable to the four annuitants are paid out of the principal, and the latter is subjected in like manner, from year to year to the discharge of the same annuities as they fall due, the capital of the trust estate will, in a very short time, be entirely absorbed, and nothing will be left for the children of *Mary Jane Hickey* who have not yet attained the age of five years, the period specified in the will when the annuities begin to run.

There is nothing upon the face of the will, or any circumstances out of it, if any thing out of the will could be resorted to, to warrant a construction productive of such consequences, and, I therefore, conclude, that the annuities are to be paid out of the income of the estate, as far as it will go, and not from the principal.

The clauses of the will which give certain pecuniary legacies to the children of the testatrix's nieces at future periods, would also be defeated by the construction contended for on the part