March 1866. J. H. Gordon Solr for John Young
Wm. Price Solr for Complainant.

And afterwards, to wit on the first day of May in the year last aforesaid was filed in the cause here the following Opinion of Court to wit,

Twigg
vs
County Commissioners of Allegany County and others

In the Circuit Court for Allegany County.
In Equity.
No 1393 Chancery.

The bill sets to procure from the Commissioners of Allegany County the legal title to a portion of land alleged to have been purchased from them by James Twigg the father of Complainant and a certain Christopher Kelly on 5th April 1853 The purchase was in understanding inasmuch the full consideration had been paid at the filing of the bill. The land sold by the Commissioners as appears by the agreement (Exhibit to Bill) is described as the reversionary interest in certain land in which Mrs Harriet Pigman then had a dower interest together with the lessor for her life interest, and also all the balance of the lands which belonged to Ben S Pigman and which had not been disposed of by Hannah B Pigman or Nathaniel Pigman trustees or by Thomas J McKaig trustee for the sale of the Real Estate of Ben S Pigman prior to the 6th April 1850 being the same lands which were purchased by the Commissioners from the said McKaig as trustee of Pigman reference being had for more particular description to the articles of agreement between them and McKaig of 6th April 1850 In the latter instrument Exhibit No 3 the lands are designated as the balance of the Walker farm not heretofore sold"

Complainants rests his claim upon a specific devise in the will of his father James Twigg deceased The County Commissioners over their readiness to comply filed a counter claim upon them for the same land by the defendant Young The latter claims by virtue of a sale made by John Hartley as Executor of James Twigg under either an express power to sell conferred by the will or by the implied power vested in him as Executor to subject the real estate of the dead to the payment of debts The controversy turns upon the construction of certain clauses in the will of James Twigg. The questions and what interest of any the Complainant took under the will and whether the executor had any power to sell as to this particular land. The positions of the Claimants are so directly the reverse of each other that the inquiry into the right of and validity of the sales of the other. First, as to the Complainants interest under the fathers will the will bears date 9th August 1854 and in its third clause provides as follows.

Item I give and bequeath to my oldest son William the following tracts or parcels of tracts of land to wit: & being one half of the tract I bought of the Commissioners of Allegany and Thomas the old farm of James Prestar together with all the improvements thereon and also part of a tract of land called "Cloverly" and containing in all five hundred and forty acres of land being the entirety of the above mentioned tract together with all the improvements thereon the above named tracts or parts of tracts of land lying and being in Allegany County State of Md,

His answer the defendant Young contends as is to the Complainant because in its face it is void for uncertainty as to what land and what part or half of land it refers to:

And because he cannot introduce matters aliunde to give greater certainty to the clause.

In construing wills we are to seek the intentions of the testator from the face of the will and in doing so have to taste all its parts in their material relations to and bearing upon each other and we are also to give effect if possible to every clause assuming that the testator has in specific purpose in each separate disposition, all of which they can be carried out constitute material elements of his mind

The testator in this case left a widow and ten children, and the purpose of the will, as gathered from its face is to give to the widow a one third interest for life in such of his real Estate as she may select and the remainder of the realty outside of its third clause, as well as the reversion after her life estate is devised to his ten children. The Complainant William was numbered among the ten, after specific pecuniary legacies to three of the children in the 7th clause he devises the rest and residue "of his real and personal Estate to be equally divided among his ten children named in the 2d clause Now thus far William and Kate an equal interest with his brothers and sisters in what was embraced in the rest and residue" But there are other provisions of the will to be gratified and what constitutes the rest and residue" in the mind of the testator must depend upon what discretion he may have made in the prior clauses of the will, It is clear that the part of the realty in which the widow might chose her dower formed no part of this rest and residue" because in the 2d clause he expressly provides for the portion of the termination of the life estate He directs it to be sold by the Executor and its proceeds to be equally divided among all the ten children, on coming to the 3d clause wherein an apparent design of the testator to except other property from this residuary devise whether the particular part of the estate can be sufficiently designated or not so as to pass it to the devisee the intention is apparent to make William a favored beneficiary under the will In the 3d and 7th items he is given an equal share with the other children, in the property which is clearly contained in those clauses, and in this 3d clause a much larger portion of the realty is designed to be given to them, If this can be gratified as fully as intended upon this Court to carry out the devise contemplated by this part of the will as any of the other dispositions it contains about the interest in the part of the testator I concede there can be no doubt the only question is how we are to arrive at the subject matter of that interest And I think it is in this that the defendants positions fails offered to look outside of the will to ascertain what the testator at the time of issuing the devises may have proposed as to their effect and to refer aliunde "to explain upon an obscure subject matter the language as used meaning of words and very different expressions and to recognized by the authorities, In the first case evidence or explanations dehors" the instrument is not admitted to speak for the testator in the latter such means of ascertaining the subject of the devise are clearly admissible 1 Greenleaf Evid P 288 to 288 Peters 68 Smith