

VIRGIL B. DALRYMPLE	}	MARCH TERM, 1853.
vs.		
ERICKSON H. TANEYHILL		
AND WIFE.		

[MUTATION OF REAL TO PERSONAL ESTATE.]

REAL estate, in which an infant was interested, was sold under a decree of this court, which sale was finally ratified and confirmed by an order of court. But the purchaser afterwards failed to comply with the terms of sale, and the trustee applied for a resale under the act of 1841, ch. 216, and an order passed accordingly, after which and before the second sale, the infant died.

HELD—

That the mutation from realty to personalty was not complete at the death of the infant, the purchaser not having complied with the terms of sale, and her share of the proceeds of sale passed as real estate to her heir at law.

The mutation is complete when the sale is ratified, and the purchaser has complied with the terms of it by paying the money, if the sale is for cash, or by giving bonds, if the sale is on credit, and a concurrence of all these circumstances is necessary to effect the change.

[The facts of this case are sufficiently stated in the opinion of the Chancellor.]

THE CHANCELLOR:

The facts upon which the questions presented by the exceptions to the Auditor's report in this case arise, are few and simple, and may be briefly stated.

On the 23d of October, 1850, Virgil B. Dalrymple, in his own right, and Agnes E. Dalrymple, his daughter, then an infant, by the said Virgil, as her guardian and next friend, exhibited their bill in this court, praying for the sale of the real estate of Zachariah Taneyhill, lately deceased, intestate, upon the allegation that the same was incapable of partition, and that it would be for the interest and advantage of all parties concerned that it should be sold and the proceeds divided among the heirs at law. Dalrymple, the father of Agnes, had intermarried with one of the daughters and heirs at law of Zachariah Taneyhill, and she having afterwards died, he became tenant by the curtesy of her share of said estate, his daughter