

sum which should be allowed *Dorsey* for the legacy purchased by him, involves a question which has not been adjudicated by this tribunal. Should he be allowed what he proves he has paid for it? We think not. By the contract he was not to pay the legacies; it was *Smith's* business to disencumber the land. And, if he is made to suffer by the purchase, he has no person to blame but himself. When *Smith* refused to exonerate the land in violation of his contract, he subjected himself to the legal consequences of such an act; but it would be a most inequitable consequence of such refusal to say, that *Dorsey* was thereby constituted his agent, with unrestricted powers to make the purchase; such a result would have placed him at *Dorsey's* mercy. But equity demands, that having purchased the legacy he should be entitled to a credit, as against *Smith*, for the legacy at its fair value, from the date of the purchase, 17th February, 1817.'

'By what rule is its value to be estimated? The Chancellor, in his decree, has adopted that value which was ascertained by the auditor by a reference to *Doctor Halley's* table of observations, which have been used in England for the purpose of ascertaining the value of life annuities, and reversionary interests. These tables are framed upon long and accurate observations on the bills of mortality in England, and in other places; and may not be an unsafe guide for the purpose in the region or latitude for which they were calculated. But the probability of the duration of human life, cannot be the same in every latitude and climate. In the one it may be prolonged to the greatest age, in the other abbreviated to what, in a more healthy region, would be considered as but a middle age; and even, indeed, in the same district of country the chance for the duration of life is by no means the same. Thus would tables, suited for the lowlands of Louisiana, furnish any index of the duration of human life in the highlands of Maryland? And, even in our own state, could any dependence be placed in the calculation of the value of an annuity, or of a reversion expectant upon a life, which would say, that as great a probability existed for the duration of human life amid the marshes of the Chesapeake Bay, as in the mountains of Allegany? These observations will be found to be verified by an examination of *Dr. Halley's* tables, as suited to different parts of England, and to places on the continent. Whether these tables, upon which the Chancellor's decree is founded, are suitable to this state, could only be told by a long series of observations here, which not