

the facts stated in the bill, are positions assumed; and must plainly appear, by the bill itself, in all cases, to entitle the plaintiff to a decree, in any form or upon any terms; and to lay a sufficient foundation upon which the Court may rest its judgment. Consent either tacit or express cannot give the Court jurisdiction where it has none; or entitle the plaintiff to relief, where, by his own shewing, it appears he has no capacity to receive it. Thus far, and to this purpose all Courts of justice, as well of law as of equity, must see, that their judgments and decisions have a proper and legal foundation to rest upon. *Bac. Abr. tit. Pleas & Pleadings, B. 5, 1; Dr. Bonham's Case, 8 Co. 239; Clarke v. Conn, 1 Mun. 160.* But, divesting these plaintiffs of their unwarranted pretensions to be considered as the holders of the equitable lien of the original vendor, their case has no one single ingredient or character of equity about it. Their remedy, if any, is at law as assignees of the bonds, or upon the special contract subsisting among the parties.

Whereupon, it is decreed, that the bill be dismissed with costs, &c.

* MURPHY v. DALLAM.

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CHARITABLE TRUSTS.

A devise of land to a religious sect without the leave of the Legislature, in some way previously had and obtained, is void. (a)

This was a creditors' bill filed on the 17th November, 1824, by John Murphy against Henrietta M. Dallam, William M. Dallam and others, the widow, executors and devisees of Josias W. Dallam deceased; upon which a decree was passed on the 8th of February, 1826, and the real estate of the deceased was sold accordingly. After which the auditor, in his report of the 29th of October, 1828, making a distribution of the proceeds of the sales among the creditors, &c., says, that he had made no allowance to John Murphy, who was a purchaser under the decree, for the lot claimed out of the property sold to him, by the Methodist society in virtue of a devise in the will of the deceased. Independently of other objections, the devise would be void as against creditors.

BLAND, C., 12th January, 1829.—It appears by the will of the late Josias W. Dallam, that he devised one-fourth of an acre of his lands as described, to Francis Asbury for the use of the Methodist

(a) Cited in *Grove v. Trustees*, 33 Md. 454. See *Dashiell v. Attorney-General*, 6 H. & J. 1, note; *Reed v. Stouffer*, 56 Md. 236; *Barnum v. Balto.* 62 Md. 275.