

the express consent of their solicitors. But, as no application has, as yet, been made by any person interested to force them to do so, the requisition of the decree may, in this respect, be allowed to stand over as regards Wayman, the trustee Stockett having given bond, until such an application shall be made.

It is, therefore, ordered, that the said Henry Wayman be, and he is hereby continued as trustee, according to the will of the said Larkin Shipley, deceased.

After which, various other proceedings were had, and sundry other investments made; and the plaintiff Larkin Shipley having attained his full age, the case was submitted for a final decree and directions. When, on the 24th of January, 1838, it was determined that the words "issue of his body," in the devise to him, were words of purchase; so that he took only an estate for life; and the trustees were directed, as before, to make investments accordingly.

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TILLY v. TILLY.

INFANT DEFENDANTS.—SALE OF LANDS OF INFANTS.—DEVISE FOR LIFE TO INFANTS.—APPLICATION OF PROCEEDS OF SALE.—PRESUMPTION OF DEATH.—DIFFERENT CAPACITIES OF SAME PERSON.

An infant defendant brought into the presence of the Chancellor, who thereupon appointed him a guardian *ad litem*. (a)

Land, belonging to infants, sold, under the Act of Assembly, on the petition of some of them by *prochein ami*, and the appearance of the others, by guardian. (b)

Such a peculiarly constituted suit does not abate by the death of any one of the infants.

Where lands are devised to an adult for life, such tenant for life may be treated as the actual pernor of the profits; but, in case of such a devise to infants, until they attain their lawful age, their guardian must take the profits and apply them according to the directions of the will.

Such a devise to several infants, for their maintenance, must be applied equally; and in greater proportions as some die, or the elder ones become of full age; and the same rule must govern the application of the gross sum for which the estate had been sold.

A person who had been absent, and not heard from for seven years, was presumed to be dead. (c)

A trustee, appointed to make sale, cannot be permitted, without the previous sanction of the Court, to apply the proceeds of the sale.

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(a) See Equity Rule, 9.

(b) See *Tomlinson v. McKaig*, 5 Gill, 256, *note*.

(c) See 19 Car. II, c. 6; *Alex. Br. Stat.* 500; *Stevenson v. Howard*, 3 H. & J. 554, *note*.