

Where a person has two capacities for the purposes of justice, each capacity may be considered as a distinct person. (d)

THIS bill was filed on the 27th of October, 1817, by Edward Tilly, Horatio Tilly, Margaret Tilly, and Elizabeth Tilly, infants, **437** * by Nicholas Brewer, their next friend, against Lucretia Tilly and Sarah Tilly. The bill states that Richard Higgins, on the 11th day of November, 1807, made his last will and testament, by which, so far as relates to this case, he devised as follows:

“I give and bequeath unto my son Joshua Clarke Higgins and his heirs forever, all that plantation whereon I now live, called and known by the name of Part of White Hall, and What you Will, except one hundred and fifty acres thereof, to be laid off at the discretion of the said Joshua Clarke Higgins, which said one hundred and fifty acres, including the house where John O’Hara lives, I give and bequeath to my said son, in trust to and for the separate use of my daughter Elizabeth Tilly for and during her natural life, and to and for the maintenance of the children of the said Elizabeth Tilly, until they arrive at the age of twenty-one, remainder to the said Joshua Clarke Higgins and his heirs forever. If my said son Joshua Clarke Higgins shall purchase the plantation whereon Jasper Edward Tilly now lives for the use of my daughter Elizabeth for and during her natural life, and to and for the use of her children until they shall respectively arrive at the age of twenty-one, then the said one hundred and fifty acres to be the property of the said Joshua Clarke Higgins and his heirs forever.”

And then, after some other devises and bequests, the testator further says, “It is my will, that the whole of my real and personal estate shall remain undivided, and undisturbed for and during the space of five years from the first day of April next, subject to the control and direction of my son Joshua Clarke Higgins, and in his possession, the proceeds to be applied to the payment of my just debts; and if there should be any surplus, the same to belong to, and be the property of my son Joshua Clarke Higgins for his care and trouble.” And then, after one other disposition, the testator, in conclusion, says, “I do hereby constitute and appoint my son Joshua Clarke Higgins to be the executor of this my last will and testament.” This will was duly attested by three witnesses, and proved in the Orphans’ Court of Anne Arundel County on the 22nd day of December, 1807.

The bill further stated, that Joshua C. Higgins had departed this life; that Jasper E. Tilly had been appointed trustee for the benefit of the said Elizabeth and her children; that the said Jasper

(d) See *Binney’s Case*, ante, 99, note (b).