

is shewn, by this petitioner himself, to have abated by the death of one of the materially interested parties; and therefore, it cannot, in any way, be further proceeded in, until it has been regularly revived. But this is a special form of proceeding, sanctioned by the Legislature, whereby a sale of the real estate of infants may be ordered, on its being shewn to the Chancellor, to be for their interest and advantage that it should be sold, and the proceeds of the sale invested in some public stock, or other permanent fund for their benefit. It is a form of judicial proceeding, which may be originated and prosecuted to a conclusion by a next friend and a guardian of an infant, without the infant himself ever having had the least knowledge of it whatever. And therefore, it cannot be treated as an adversary suit, which abates by the death of an infant who was a party to the proceeding; since his heir, or representative comes in after his death, not to prosecute or defend an unsettled right, but merely to claim that, in a new form, the right to which had never been drawn in question; and was not then, in any way, to be put in issue. The representative is let in to make his claim as from the deceased infant's guardian, considering this Court in such a proceeding for the sale of the infant's estate, as having officiated as his guardian, by having thus undertaken the conversion and management of his estate. The interest of these infants sold under the decree, was of a nature that could not, on their death, descend to their heirs as real estate; and therefore, this administrator of Horatio Tilly, deceased, who was one of the original parties to the proceeding, may now well be allowed thus to come in, to obtain so much of his intestate's interest as remained unsatisfied, at the time of his death, by the trustee Brewer.

Ordered, that the said trustee forthwith make a full and particular report of his proceedings on oath; and bring into Court all the money now in his hands, as prayed, or show good cause to the contrary, on the third day of December next; provided, that a copy of this order, together with a copy of the said petition, be served on him on or before the twenty-first instant.

On the 3rd of December, 1829, the trustee Brewer, made report on oath, in which he says, that he received a small part of the proceeds of said sale in cash; that the greater part was paid by said Joseph Evans, to the said Lucretia, Edward, Elizabeth, Margaret and Sarah Tilly, or for their benefit, with the trustee's consent; * that considering the proceeds of the said sale to be **441** applied to the maintenance of the aforesaid persons, some of whom, to wit: Lucretia and Margaret, were very young, and totally unable to provide for themselves, in such proportions as their respective necessities required, he appropriated the whole proceeds of sale, and a considerable additional amount to that