

tee is directed to hold "to and for the maintenance of her children, until they should arrive at twenty-one years of age."

Where an estate is given to a trustee to hold for the use of an adult of sound mind, for life or any given period of time, the object of the donation may be most beneficially obtained by considering the donee as the actual pernor of the profits; and merely allowing him to enter upon the estate, and gather for himself all the products and benefits he can obtain. But where such a donation is made to infants or lunatics, for their maintenance, from the very nature of the gift, it must be deemed to have been the intention of the donor, that the actual pernaney of the profits should be committed to other hands for the benefit of the *cestui que use*; because otherwise, the express purpose of the bounty might fail, or become altogether nugatory.

Therefore, I held it to have been the intention of this testator, that his daughter Elizabeth, should be allowed herself, to take the profits of the estate during her life, in any way she might deem most advantageous; and, that after her death, the profits should be collected by the trustee himself, and applied to the maintenance of her infant children.

The testator has made no distinction as to the nature and quality of the maintenance to be given to any of the infants; and consequently, they must be all placed upon the same footing, and be allowed to come in equally, share and share alike. And as it is a gift for maintenance only, it is manifest, that it must cease as well by the death as by the full age of each one of them, although the testator is silent as to a termination of the right by death. Hence, supposing the estate to be equally productive each year, during the whole time this incumbrance continued, it is evident, that the fund thus appropriated for the maintenance of these infants, \*would be applicable in greater proportions to the younger or survivor of them, as the right of each elder or **443** other one, was terminated; since it is directed that the whole of the profits should be given in maintenance, even if there should be but one infant left. If this right of these infants had not been sold, there could have been no difficulty in directing the trustee to collect the annual profits of the estate, and to apply them to the maintenance of such of the infants, as should be alive at the time of the distribution.

But the sale which has been made, presents the object under a new aspect. The whole of the rents and profits which could ever have been taken by the trustee for the benefit of the infants, have, by a kind of anticipation, been gathered at once, and the estate has been finally and conclusively discharged from the incumbrance; and therefore, the question now is, how are the proceeds of the sale of the whole of this right to be administered?