full age or death of the youngest, or last of the infants, when the interest sold, expired; and the distribution of the net proceeds of sale must be made upon those principles among those infants, or the representatives of those who died before their shares which thus vested had been actually paid.

It is said that the death of the petitioner's intestate, is only presumed from his long absence. The general rule is, that any one who has not been heard of for the space of seven years may, for all legal and equitable purposes, be presumed to be dead. Therefore, in this instance, the death of Horatio Tilly may be assumed to have happened just seven years after the day on which it is shewn by proof, that he was last heard of.

It is expressly declared by the law under which the sale of the interest of these infants appears to have been made, that no part of the principal arising from the sale shall, in any wise, be applied towards the maintenance of the infant unless the Chancellor shall consider it necessary. 1816, ch. 154, s. 8. Now, whether these proceeds are to be * considered as arising from a sale of the infants' real estate, or only from a sale of the rents and profits **445** of such an estate during a given period, to which alone these infants were entitled; still, this is a legislative regulation in relation to the matter, which no trustee can be allowed, at his pleasure, to violate or disregard; he, of himself, cannot have a shadow of authority to make any application of the proceeds of sale in any way whatever. But, apart from the express provisions of any Act of Assembly, upon general principles, no trustee, appointed to make sale of property under a decree, in the usual form, directing the proceeds to be brought into Court, can be allowed, in any manner whatever, to dispose of them without the express previous sanction of the Court. This is a very ancient rule of this Court, and a due regard to the interests of suitors, requires that it should be inflexibly adhered to. Therefore, all the causes shewn by this trustee as such, why he has departed from the positive command of the decree requiring the money to be brought in must be wholly disregarded. *Bennett* v. *Hamill*, 2 *Scho. & Lefr.* 580.

But it appears by the proceedings, that Nicholas Brewer has been clothed with several offices in connection with the rights of these infants, and that he has acted in two distinct characters. It is a settled principle, that where two or more capacities are vested in one and the same person, each capacity, for the purposes of justice, may be considered in the same light as if they were several persons. *Coppin* v. *Coppin*, 2 *P. Will.* 295; *Johnson* v. *Mills*, 1 *Ves.* 283; *Binney's Case*, *ante*, 108. Nicholas Brewer was appointed a trustee under the will of the late Richard Higgins; and I have described what were his rights and duties as regards the estate so placed in his hands for the maintenance of the infants. Considering him as a distinct person, while acting in that capacity, he must