

This application, for the sale of the real estate of these infants, is founded upon the provisions of several public and General Acts of Assembly, by which, among other things, it is declared, that where any infants shall be possessed of any real estate, it shall be lawful for the Chancellor, upon the petition of the guardian or *prochein ami* of such infants, after summoning them, and their appearance by guardian, to be appointed by the Chancellor, to issue a commission to not less than three discreet and sensible men, freeholders of the county where such lands may lie, to view and ascertain, by competent and disinterested evidence, the value of such lands, taking into consideration the quality, local situation, improvements, with all the advantages, and also the disadvantages and incumbrances attending the same; and to determine whether it would be to the interest and advantage of the infants, that such land should be sold; (f) and report the same to the Court with their reasons therefor. Provided, that such report shall not be conclusive, but the Court may, in its discretion, examine witnesses, and have other testimony, and shall decree a sale only in those cases where, under all circumstances, the Court shall be satisfied, that a sale would be for the interest and advantage of the infants. And it is further declared, that in case of

204 the death of the infant, * without issue, the proceeds of sale shall be considered as real estate, and shall descend to those heirs who would be entitled to the land if it had not been sold. 1816, ch. 154; 1818, ch. 133, s. 2, and ch. 193, s. 7, 12 and 13; 1819, ch. 183; *Tilly v. Tilly*, 2 *Bland*, 436.

There is every reason to believe, that these public and general Acts of Assembly, which it is proposed by this petition to have put in execution, were passed in consequence of the numerous applications which had been previously made to the Legislature for authority, by special estate Acts, so to dispose of the property of infants, as most judiciously and effectually to maintain and educate them; and in order to turn over to the Courts of justice a class of cases which, evidently, belong more properly to the judicial than to the legislative department of the government. But these laws, like some others of no less utility and importance, lay open to the most latitudinous construction, and pernicious application; and therefore require to be carefully considered, and in each case very guardedly carried into effect. *Waring v. Waring*, 2 *Bland*, 673.

By virtue of the power of eminent domain, which belongs to ours as to all other governments, private property may be taken for public use, on a just compensation being made. But it may

(f) The Legislature has since authorized the real estate, chattel real, or trust interest of an infant to be sold, leased or mortgaged, 1831, ch. 311, s. 2, 3 and 12; 1835, ch. 380, s. 9.