

after his death ; that she subsequently intermarried with Henry H. Pue, by whom she had two children, the said Matilda and Henry, and died in the year 1814—leaving her husband and said children surviving her ; that her husband is now in possession of the land as tenant by the courtesy ; that it would be beneficial to all parties, but particularly the infants, that the estate be sold, and the proceeds of sale properly distributed amongst them ; and praying for such sale. Before a sale (to which Henry H. Pue by his answer agreed) was made, a petition was filed in the cause by Rezin Hammond and others, objecting to the proceedings, on the ground that they had not been made parties thereto, although interested as trustees for the said infants ; and denying that the said lands were devised to the said Harriet Hammond in fee simple, or that her husband had any interest therein. The petitioners also prayed to be made parties, which was accordingly done. A commission was afterwards issued, and certain testimony taken, relative to the propriety of a sale, the effect of which is stated by the Chancellor in his opinion ; and evidence was also given of a lease, to which the land was subject, but which the lessees had agreed to surrender on certain conditions, for the purpose of facilitating a sale. The two clauses of Philip Hammond's will, under which the parties respectively claim, are set forth in the Chancellor's opinion.]

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THE CHANCELLOR :

Upon a more careful examination of the will of Philip Hammond, deceased, my mind has been brought to the conclusion, that his daughter Harriett, who afterwards intermarried with Henry H. Pue, the elder, took an estate in fee, in the lands mentioned in the proceedings in this cause ; and that, consequently, her children upon her death, took by descent from her, and not as purchasers under the will of their grandfather, the testator.

The language of the devise to Harriett is confessedly full and ample to pass the fee. It is to her, "her heirs and assigns forever," and she must, therefore, take the entire estate, unless in some other part of the will there are provisions, which, either