

MURPHY v. DALLAM.

A devise of land to a religious sect without the leave of the legislature, in some way previously had and obtained, is void.

This was a creditors' bill filed on the 17th of November 1824, by *John Murphy* against *Henrietta M. Dallam*, *William M. Dallam* and others, the widow, executors and devisees of *Josias W. Dallam* deceased; upon which a decree was passed on the 8th of February 1826, and the real estate of the deceased was sold accordingly. After which the auditor, in his report of the 29th of October 1828, making a distribution of the proceeds of the sales among the creditors, &c., says, that he had made no allowance to *John Murphy*, who was a purchaser under the decree, for the lot claimed out of the property sold to him, by the Methodist society in virtue of a devise in the will of the deceased. Independently of other objections, the devise would be void as against creditors.

12th January, 1829.—BLAND, Chancellor.—It appears by the will of the late *Josias W. Dallam*, that he devised one-fourth of an acre of his lands, as described, to *Francis Asbury* for the use of the Methodist society and a school. It is not shewn, that this society ever obtained the leave of the legislature, in any manner whatever, to take or hold this property. The act of 1802, ch. 111, authorizes any religious society to form themselves into a body politic, and the 8th section of that act, and the act of 1815, ch. 222, authorizes such corporations to take and hold a certain amount of property. But it has not been shewn, that the Methodist society to whom this devise was made had formed themselves into a body politic, and thus became qualified to hold this property by virtue of this general leave of the legislature. (a) Therefore I am of opinion, that this devise must be considered as absolutely null and void by virtue of the 34th article of the Declaration of Rights; and upon that ground the claim of the society has been properly rejected.

(a) By the act of 1791, ch. 17, it was enacted, "that the leave of the legislature be hereby granted to the said religious society of people called Quakers, to enjoy for ever the use of the said land in East Nottingham, and West Nottingham; provided the Chancellor, on examination, shall find the facts above stated to be true," &c. This appears to be the first act of the kind, passed in pursuance of the 34th article of the Declaration of Rights.