

character. It is clear, that the trustee was to hold, at all events, for the use of the testator's daughter, *Elizabeth Tilly*, during her life; but whether any or what interest, during the same time, vested in her children seems doubtful. It is certain, however, that as tenant for life, she was constituted the pernor of the profits of the estate charged, either for her own **exclusive** use, or for her own benefit, and also for the maintenance of her children. During her life, therefore, it could only be the duty of the trustee to hold the legal estate for the purpose of protecting the right thus given to her. But on her death, a new and different interest vested in her infant children. After her death, the trustee 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 pernanacy 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 hold 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,