

would be applicable in greater proportions to the younger or survivor of them, as the right of each elder or other one, was terminated; since it is directed that the whole of the profits should be given in maintenance, even if there should be but one infant left. If this right of these infants had not been sold, there could have been no difficulty in directing the trustee to collect the annual profits of the estate, and to apply them to the maintenance of such of the infants, as should be alive at the time of the distribution.

But the sale which has been made, presents the subject under a new aspect. The whole of the rents and profits which could ever have been taken by the trustee for the benefit of the infants, have, by a kind of anticipation, been gathered at once, and the estate has been finally and conclusively discharged from the incumbrance; and therefore, the question now is, how are the proceeds of the sale of the whole of this right to be administered?

It must now be assumed, that the court had the power to order the interest of these infants to be sold, as directed by the decree of the 27th of October, 1807; since that decree cannot now be in any way revised or reversed. (b) And it must also be presumed, that the sale so ordered, was intended for the benefit of each of these infants respectively, according to the terms of the devise under which they claim, as the sale of that interest so given, was alone ordered to be sold by the decree; and consequently, the right of no one of them can now be taken to have been in any respect enlarged, lessened, or impaired by that decree. As infants, and during non-age, their claims were exactly equal; but, considered as elder and younger children, the extent and duration of their interests, in the proceeds of sale, are essentially different. The interests of the younger being greater than those of the elder, in proportion as the difference of age gives to the younger or survivor, a right to have a greater share of the whole annual product, applied to their maintenance after the death or full age of the others.

If the charge upon this real estate, for the benefit of these infants, had been suffered to remain, the whole profits must have been applied for the use of those only who were the infant survivors at the time the profits accrued. And as it could not have been the intention of the court to enlarge, diminish, or alter the rights of any one of them by the sale, it is clear, that these proceeds of sale, being in fact, the price of those rents and profits, must be dis-

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(b) 1785, ch. 72, s. 27.