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MARYLAND GAZETTE

Annapolis, Thursday, Aug. 12, 1822.

THE SPRINGS.
It is stated in a New-York paper, that on Monday the 12th inst. there were 1500 persons at Saratoga and Ballston Springs.

COURT OF APPEALS.

George Dashiell, & others, Appellants, v. John Term, 1822, County Court.

The Attorney General, at the relation of the Trustees of Hillsborough School in Caroline County, and of The Vestry of St. Peter's Church, & others.
BURNHAM, J. delivered the opinion of the Court.
This case has been ably and elaborately discussed, and on an attentive examination of the numerous authorities referred to, and relied upon in argument by the counsel on either side, we have come to the conclusion; That the peculiar law of charities originated in the statute 43 Elizabeth, for regulating charitable uses, and that independent of that statute, a court of charity cannot, in the exercise of its ordinary jurisdiction, sustain and enforce a bequest to charitable uses which, if not a charity, would on general principles be void; and in this we are supported by the decision of the Supreme Court of the United States, in the case of The Baptist Association against Hart's Executors, in which all the principal authorities are reviewed, and the subject fully investigated.
It is an admitted general principle, that a bequest, the object of which is indefinite, cannot be established in a court of equity.
Is this a bequest of that description? We think it clearly is. The testator, by his will, appointed the appellant George Dashiell and Henry Downs, trustees of his estate, and guardians of his only child, with instructions to his executors to pay over to them, the annual income of his estate, to be by them appropriated according to the provisions of the will, after providing among other things, for the payment of his daughter's support and education, and the residue of the income of his estate, to be equally divided, one half to be applied towards her clothing and educating, the poor children belonging to the congregation of St. Peter's Protestant Episcopal Church in the city of Baltimore, &c. with certain provisions for the eventual increase or decrease of the fund so set apart for that purpose.
Wherever the word poor, or poorest, has been used as a term of description, in a devise or bequest, it has been held to be sufficient for uncertainty, as a devise to twenty of the poorest of the testator's kindred.—Powell on Devisee, §19, 3 Com. Dig. 412, with many other authorities to which it is unnecessary to refer. In this case the bequest is quite as vague and indefinite as if it was to twenty of the poorest relations, or to his poor relations generally, or to the poor people of a particular county.
Who are the poor children belonging to the congregation of St. Peter's Protestant Episcopal Church in the city of Baltimore? no court can know, or have the means of ascertaining; and the description of the cestui que trust is so vague, that none can be found who, upon the general principles of equity, can entitle themselves to the benefit of the trust.
It seems to be supposed, that the power of ascertaining and designating the poor children belonging to the congregation of St. Peter's Church, is given by the will to the trustees, and that the beneficiaries of the cestui que trust may be ascertained by reason of the intervention of trustees capable of taking the legal estate, and on the principle that id certum est quod certum est non potest.
If it be admitted that authority is vested in the will in the trustees to ascertain and designate who are the poor children belonging to the congregation of St. Peter's Church, it cannot, abstracted from the will, assist the case of the defendants, in being a personal trust, without the aid of the statute, the cestui que trust can only be brought into being by the ascertainable and designation of the trustees; and then, being no certain ascertained and designated persons, no persons exist having an interest in the trust, which might be deemed applicable to our local laws and circumstances, it was exceedingly idle to declare such of them to be in force, and by experience been found applicable; and that a different language adopted in relation to them from that which was used in relation to the common law for they were both equally brought with them by our ancestors.
The circumstance of a different provision being made shows that the convention enacted different views with respect to them.
It could not have been intended as a mere directory provision for the purpose only of removing doubts that existed at the time, if there were any statutes about the extension of which no doubts were entertained, it must have been those which, by experience, had been found applicable, and which were no necessity for declaring the inhabitants of the state to be entitled to their use, unless it was the intention to prohibit the use of all such as had not by experience been found applicable.
This view of the third section of the bill rights existing at the time of the first emigration had by experience been found applicable. The only evidence to be found on this subject is to be furnished by *Key's* report of the Statute in which the thirty-fourth of Elizabeth, passed among those which are said not to have been found applicable. That book was compiled, printed, and distributed, under the sanction of the Legislature, for the use of its officers, and is a safe and authentic authority in exploring an otherwise very dubious path.
It is therefore our opinion, that the statute 43 Elizabeth, is not in force in this state, and that the devise, ought to be rejected. DECEASE REVENUES.

the property in the hands of any other person, and the statute of Elizabeth, no court in this state can by any mode execute such a devise, or bequest into effect, in violation of vested, individual rights. It would be to make and not expound and enforce wills, an arbitrary exertion of judicial power altogether inconsistent with any principle known to the institutions of the state. And it is believed that in England, before the statute of Elizabeth, no charity could have been established, information in the name of the Attorney General, where the instrument creating it was defective, or the object of the donor's or testator's bounty was so vaguely and imperfectly described as to be incapable of taking it was not a charity, and the things intended to be given would vest in the heir at law or next of kin; but that whenever charities were established on such informations, they were such as were valid in law, and the enforcement of which did not interfere with vested private rights. It is also, in this case, a fatal objection to the validity of the devise, that it is not for the benefit of those poor children alone, who at the time belonged to the congregation of Saint Peter's Church, but of the poor children who should in succession belong to that congregation; and who not being a corporate body were incapable of taking in succession; a devise of bequest immediately to an object incapable of taking, or in trust for such an object, standing in no better footing than if it were to a vague and indefinite object, and 'The Trustees of Saint Peter's Church' and 'The Trustees of Hillsborough School in Caroline County' have clearly neither of them either a vested right in themselves, or any beneficial interest in the trust.
The next and principal question is, whether the statute 43 Elizabeth is in force in this state; which we think depends entirely on the construction to be given to the third section of the bill of rights, and the evidence furnished by Chancellor Kilby's report of the bill of rights, in these words: "The inhabitants of Maryland are entitled to the common law of England, and the law, and to the benefit of such of the English statutes as existed at the time of their first emigration, and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great Britain, and have been introduced, used, and practised by the courts of law or equity." The provisions of this article vary according to the different subjects to which they relate.
The inhabitants of the state are declared to be entitled to the common law, without any restrictive words being used, and thus the common law is adopted in mass, so far as it is not inconsistent with the principles of that instrument, and the nature of our political institutions.
They are declared to be entitled to the benefit of such of the English statutes as existed at the time of their first emigration, and which, by experience had, at the time of the declaration of rights, been found to be applicable to their local and other circumstances, and also to the benefit of such other British statutes, made after the emigration, as had been introduced, used and practised by the courts of law or equity—a distinction being made between the statutes which existed before the emigration, and those which were afterwards made, and between both and the common law. We do not think that this section of the bill of rights is to be expounded according to the rule of construction applicable to declaratory laws, but that it must be understood as adopting the different classes of the statutes to which it relates *sub modo* only, and rejecting all others; and as laying down rules by which to ascertain what statutes were so adopted—a different rule applying to each class. In relation to those which existed at the time of the emigration, their having been found by experience to be applicable to our local and other circumstances, being the rule for the government of courts of justice in determining which are in force; and their having been introduced, used, and practised by the courts of law or equity, the rule in relation to those passed since the emigration—as to the latter class, it does not seem to be deemed that none are in force but such as had, at the time of the declaration of rights, been introduced, used, and practised by the courts of law or equity; and if that rule was intended to be restrictive, it is difficult to ascribe to the convention a different intention in relation to the others, which might be deemed applicable to our local laws and circumstances, it was exceedingly idle to declare such of them to be in force, and by experience been found applicable; and that a different language adopted in relation to them from that which was used in relation to the common law for they were both equally brought with them by our ancestors.
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SOUTH AMERICA.
Our attentive correspondent, Mr. Wm G. Lyford, under date of Norfolk, August 18, writes as follows:—The U.S. Corvette John Adams, Captain Renshaw, dropped down into Hampton Roads yesterday morning, and would have proceeded direct to sea had the wind permitted—she, however, is probably under way before now. I understand her destination is first for Vera Cruz, then Carthagena, and then on to an accompaniment by his friend and connexion, Mr. Richard Adams, a young gentleman belonging to Richmond, having taken her passage in her. Colonel Todd we know goes out as Charge des Affairs for the United States to the Government of the Colombian Republic—he will be landed probably at Carthagena, or possibly at Lagaira, and then proceed to Santa Fe de Bogota, the Capital of the Republic, which is about 1000 miles in the interior of the country.
I am indebted to Captain Bacci, a passenger in the *Only's* Dugter, for the 'Curacao Courant' of the 27th July, and for the following item of news, dated Puerto Cabello, dated July 1st, 1822:—Puerto Cabello, is still besieged by the Patriots, and but little progress is made in the siege. General Morales arrived here a few days ago, and sailed again this morning, having one 44 gun frigate, a 20 gun brig, and five armed schrs., on board of which are two thousand men destined for a secret expedition to windward.
General Bolivar, in the province of Pastos, on the borders of Upper Peru, has fought a most desperate action with the Spanish General Cruz Mourgeon, which ended with the victory of Bolivar, who equal 5,000 men each, and it is calculated the Patriots lost half their army and one general. The Spanish loss has been also uncommonly severe. Fed Gaz.

SINGULAR.
Married at his residence in Baltimore county, on Wednesday evening, July 31st, Mr. Joseph James, to Miss Julia Yearly; and on Sunday night following said James died.—Now the singularity of the case does not consist so much in Mr. James' sudden death, as in the fact of his leaving a widow no more than thirteen full years old.
Bond of Union.

DISTURBANCE.
Philadelphia, August 14.
A number of coloured persons have been bound over to appear at the next Mayor's court, to answer for their conduct at the church in Lombard Street, between Fifth and Sixth Streets, on Sunday afternoon last. It seems that this church was built a few years since by a party of receders from the congregation of Allenties, in Sixth Street, near Lombard, but that the African Bishop, acquiring in some way a title to it, went in procession at the head of his followers, on Sunday last, to consecrate it. Before this ceremony, however, could be performed, a battle took place, in which the Allenties were completely victorious.—Union.

Norfolk August 14.
THE MACEDONIAN.
Accounts of the health of the crew of the frigate Macedonian are not so favourable as we had hoped. Six new cases were reported on Monday, and two on Tuesday. One death occurred yesterday.

MEXICO.
Extract of a letter from a merchant in Tampico to his Correspondent in New-Orleans, dated June 21.
"An express just arrived from Mexico, brings information that the Emperor Iturbide has seized on a convey which was about sitting out for Vera Cruz, with \$900,000, and appropriated the same towards paying the current expenses of his government; thus you see the poor Gachupins pay for the roast. In Mexico, the discontent is general, and many of the creoles even, have, or intend to emigrate, from dissatisfaction to Iturbide, and through fear of the holy inquisition which is about to be restored."

QUEBEC, Aug. 4.
The heat for several days has been very oppressive—the thermometer has risen as high as 93, in the shade, to-day; the reader may have heard that on Friday morning last the potato leaves and other tender vegetables were discovered in several parts of the country round this city to have been frozen during the night.—The changes have been very sudden throughout the summer, and we think the weather during this season has differed very widely for several years past.

From the Frederick-town Citizen, Aug. 16
We have just been informed that a 10-acre field of clover, in the vicinity of this city, which had been allowed to stand for several months, and the crop was wholly consumed, together with about 50 panels of fence.

INTEREST.
The legislature of Mississippi have fixed the legal rate of interest at 8 per cent per annum. Persons who loan money however, may recover 10 per cent if the borrower contracts to pay it.

A Mr. Luther Stark, of Wayne County, (Pa) cut from one acre of land, which has not been manured for some years, and upon which there are many large stumps, 5835 lbs. of hay.

MONUMENT.
The corner stone of the monument erected at Gosport, Orange county, N. Y. over the remains of the brave men who fell in the Miniskink battle, in the revolutionary war, was laid by the venerable major general Hathorn, of Warwick, who commanded the American troops in that battle. He is now in the 80th year of his age. The address which he had prepared for the occasion, was read by the rev. Mr. Willson, of Newburgh, to an audience consisting of between 14 and 15,000 people.

CONFUSION OF TONGUES.
From the Boston Statesman.
A singular and somewhat amusing occurrence took place a few evenings since, in the western section of our city. As regularity seems to be a strange person, so it was observed by some member of the family to be cautiously stealing his way towards the upper chambers of a light in this end, about half past nine o'clock in the evening. The alarm was given, a constable was for, and my gentleman, somewhat loth, wheta a number of young ladies were spending the evening in a social visit near a poor wight in a worse predicament—suspected of robbery, and a constable expected every moment, he had no alternative, but to disengage the real object of his unlucky attentions, which, however, by the ridiculous countenance, and feeling he could only muster courage, merely to ejaculate in answer to their numerous enquiries, and upbraiding "Ask the Maid!" The maid was called in, and a court of enquiry immediately organized, of which the worthy matron was president, and all the young ladies members, to investigate the affair. After the statement of the witness was fully completed and the court and criminal had cross examined her sufficiently, the evidence was summed up by the president, and appeared to be briefly as follows:—That the witness having met the criminal near the gate of her house, and he having expressed a wish to write some letters, she had given him permission to step in to her chamber, for that purpose. Whereupon the court, after due consideration, terminated that the witness, should be forth with discharged from service. With regard to the criminal, it was the unanimous opinion of the court, that he was a very naughty man, and it was ordered, that after being imprisoned by every member of the court at the same time, for the space of fifteen minutes, he should be set at liberty. Which sentence was immediately carried into execution.

THE WAY THEY DO THINGS IN MISSOURI.
The following Address to the people of Missouri, is extracted from a St. Charles, (M.) paper, entitled "The Rights of the People to the Old Values who make Corn and Bacon in the County of St. Charles."
I have offered to represent you in the next General Assembly. And if you elect me I will not turn out to be a Shogun, as many of your representatives did last year. I am from old Kentucky, a thorough-going farmer—and a hater of those soft-going gentry, sap suckers, cut worms and worm-eaters—who hover round the honest farmers and mechanics, like crows round a corn field. I will ward out the law, fix the loaf office for slow travellers, and put down the host of Speculators—who are ruining the state—consisting of Merchants, Pedlars, Grocers, Shavers, Gamblers, Tavern Keepers, Billiard Players, Judges, Jugglers, Nequamancers, Lawyers, Sheriffs, Constables, Justices of the Peace, and Dandies.—These, my old shag handed boys, are my political marks and brands—and I pledge myself not to alter my course of politics, until the would be gentry, go to work or leave the State in their boats.
DAVID LAMASTER.

Norfolk, Aug. 17.
It is with deep regret we add to the list of victims to the fever prevailing among the crew of the U. S. ship Macedonian, the name of Dr. Samuel M. Kissam, late acting surgeon of the U. S. brig Spark, who expired on Friday evening at 10 o'clock. He contracted the fever while in discharge of his duty on board the Macedonian, having been for some time in attendance on the sick on board that ship, and subsequently on Craney Island. He was a native of New-Jersey.

Extract of a letter from a gentleman in St. Francisville, to a friend in Alexandria, (Lou.) dated July 31.
"This country was never more sickly than at present; it is again visited with what is termed by medical gentlemen the cold plague or black fever—which proved so fatal in the year 1819. He says, that in no case where medical aid was not rendered before the second paroxysms of fever, has the patient recovered, and invariably the third takes him off. Symptoms of this disease are, chills, succeeded by high grades of fever in the head and chest, with the extremities cold at the same time; here the faculty deplete and stimulates simultaneously, and if the third fever does not kill, the patient recovers. The parts that remain cold assume a black colour and the skin scales off. Hence it is termed the cold plague and black fever."

Latest from England.
By the ship Magnet arrived at New-York on Sunday from Liverpool, whence she sailed the 4th July.
THE CROPS IN ENGLAND.
The wheat harvest had commenced in Kent, Essex and Cornwall, and the general appearance of the crops was favourable. In the Agricultural report for June, it is stated, that the autumn wheat, with the usual local exceptions, would be a great crop, and the harvest early.
According to a return laid before Parliament, the total amount of Bank of England notes in circulation on the 5th ult. was 16,401,450*l.*

INSURRECTIONARY MOVEMENTS IN FRANCE.
From the London Courier, of July 10.
The intelligence in the Paris papers of Sunday of more importance than it has been for some time past. The partisans of Buonaparte have not utterly abandoned all hope of destroying the present government, and though he is no more, they form projects, and make his name, *Vive l'Empereur*, their watch word and rallying cry.—There has been an attempt in the department of the Upper Rhine, to seduce three regiments; the principal person concerned was a Lieutenant Colonel C... already implicated in the conspiracy of the 19th of Aug. 1820, and a veteran named Reger.—The account in the Monitor is very lame one. They had previously received money, and were continually giving out that they were acting by virtue of orders from a central committee established in the capital. We have no doubt they were—and, in all these

revolutionary attempts, we find that the conspirators prefer, in want of funds, Whence, and by whom are they furnished? However, the conspiracy broke out on the 24 July it had been expected, One squadron left Colmar, and another Neuf Brisach, to meet at a central point—Roussach. Caron had at first announced his intention of releasing the prisoners at Belfort, but postponed it until he had received reinforcements.
Now, as this intention was so publicly known to the troops, they could not have supposed that his designs were friendly to the existing government. When he arrived at Roussach, he cried out "Vive l'Empereur!" and led the squadron to Maysheim, where he found another squadron of chasseurs. He announced to them also, that he came to command them in the name of the Emperor. He then shaped his course to Einsheim, which he wished to enter, but was opposed by two Quarter Masters, who reminded him that he had promised to conduct them to the rendezvous of his associates.
The Monitor then closes its account abruptly with saying that Caron and Reger now took the alarm, endeavoured to effect their escape, were arrested and carried to Colmar. Now, the conspiracy was known beforehand, five or six Officers, faithful to King having marched in the ranks of the two squadrons as privates; we do not see why the two leaders were not arrested at once, without suffering the troops to march from place to place, and follow a man who had announced his treasonable intentions by calling out *Vive l'Empereur!* The Monitor's account affords us sufficient grounds for suspecting that the conspiracy was more serious than it was willing to allow.

OBITUARY.
COMMUNICATED.
"Death! great proprietor of all! 'tis thine 'To tread out empire, and to quench the stars."
DIED, in this city, on Sunday night last, in the 27th year of his age, Mr. WILSON BRYAN, merchant. He had embraced religion early in youth, and at the time of his death was an exemplary member of the Methodist Protestant Episcopal Church.
Were we disposed to pursue the prevailing fashion of the day, many amiable and excellent traits in the character of the deceased, might be named. But prolix and ostentatious obituary notices savour too much of human vanity to receive our approbation. They are not often viewed as comprising a faithful delineation of the character of the deceased. Many consider them as the mere effusions of friendship, intended alone to soothe the agonised bosoms of surviving relatives and connections. Therefore, in this article, no tedious detail of the virtues of its subject shall be entered upon, and the eulogy pronounced shall be one, which every reader should endeavour to merit.
HE WAS A PIOUS CHRISTIAN.
COMMUNICATED.
DIED, on Thursday the 15th instant, Mr. EDWIN GOTT, of this county, after an illness of sixteen days, in the 29th year of his age, leaving behind him a disconsolate wife, of whom he had been wedded only four months, and eight days, an affectionate mother, and many other relations to mourn his loss.
The many excellent qualities which the deceased possessed, rendered him an example of filial affection to all who knew him. May he now repose in the bosom of his God, where the cares and sorrows of this world cease to trouble, and the weary soul finds rest.

A Farm to Rent.
The subscriber wishes to rent her Farm on the north side of Severn River, (in Broad Neck,) about five miles from the city of Annapolis.
ANN BOONE.
August 7.

NOTICE.
The subscriber having obtained letters of administration on the personal estate of Thomas Bicknell, late of Anne-Arundel County, deceased, requests those who are indebted to him to make immediate payment, and those who have claims, to bring them in, or inform the subscriber of their amount.
Nicholas Brewer, Junr.
August 22, 1822.

Anne-Arundel County, Md. sc.
This is to certify, that on the 8th day of August Henry H. Brown, of the said county, brought before the subscriber, one of the justices of the peace in and for the county aforesaid, a BAY GELDING COLT, which he alleged had been taken up by him in the act of trespass on his premises.—The actual and artificial marks of which said Colt are as follows.—Colour bay, with a dock tail, marked with the letters E D on the left shoulder, and appears to be about three years old.
Given under my hand and seal this 8th day of August 1822
Worthington, (Stal.)
The owner of the above described colt, is requested to come, prove property charges, & take him away.
Henry H. Brown.
head of seventh

NOTICE.
The creditors of the late Thomas Worthington, Junr. are notified that a second dividend of the personal estate will be made on the third Monday of September next, at the Office of the Register of Wills, in the city of Annapolis, at 12 o'clock in the forenoon, at which time and place they are requested to attend to receive their respective proportions of the dividend.
Nichs. Worthington, of Thos.
Aug. 12.

FOR SALE.
BY SHAW & GAMBILL, Smo. Price \$5 00.
A REPORT
Of all such ENGLISH STATUTES.
As existed at the time of the first emigration of the people of Maryland, and which by experience have been found applicable to their local and other circumstances; and of such others as have been made in ENGLAND OR GREAT-BRITAIN, And have been introduced and practised, by the COURTS OF LAW OR EQUITY; And also of such parts of the same as may be proper to be introduced and incorporated into the body of the STATUTE LAW OF THE STATE.
Made according to the directions of the Legislature.
BY WILLIAM KILBY, Chancellor of Maryland.
To which are prefixed, AN INTRODUCTION And Lists of the Statutes which had not been found applicable to the circumstances of the people: With Full and Complete Indexes.
The proceeds of the sale of the above work are, by a resolution of the General Assembly, to be appropriated, under the direction of the Chief Judge of the Court of Appeals, and the Chancellor of Maryland, to the purchase of a Public Library, for the use of the Superior Court, and the General Assembly.
Aug. 15.
State of Maryland; Sc.
Anne-Arundel county, Orphans Court, Aug. 9th, 1822.
On application by petition of Henry Maynard, administrator of William Bowser, late of Anne Arundel county, deceased, it is ordered that he give the notice required by law for creditors to exhibit their claims against the said deceased, and that the same be published once in each week, for the space of six successive weeks in the Maryland Gazette and Maryland Republican.
Thomas H. Hall, Reg. of Wills A. A. County.

Notice is hereby Given,
That the subscriber of Anne-Arundel county, hath obtained from the Orphans Court of Anne Arundel county in Maryland, letters of administration on the personal estate of William Bowser, late of Anne Arundel county deceased. All persons having claims against the said deceased, are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, at or before the 10th of February next, they may otherwise by law be excluded from all benefit of the said estate. Given under my hand this 14th day of Aug. 1822.
Henry Maynard, Admr.
Aug. 15.

Treasury Office,
Annapolis, August 1st, 1822.
Pursuant to the provisions of an act of the general assembly of Maryland, passed on the 9th day of February, 1822, entitled "An act relating to the Maryland Lottery," authorising the Treasurer of the Western Shore to constitute certificates of stock to the amount of \$28,000,
Notice is hereby given,
That sealed proposals for lending the State of Maryland the sum of \$28,000 payable at the option of the lenders at any time within 30 days from the date hereof, will be received at the Treasury of the Western Shore at Annapolis, until the first Monday in September next.
It is required that the proposals shall specify the sum which the parties are willing to give for every \$100 of stock, bearing an interest of 5 per cent per annum, payable quarterly yearly, and redeemable at the expiration of thirty years. If not redeemed at that time, it is to bear an interest of 6 per cent per annum from that time until paid. The money offered to be lent (if the proposals be accepted,) is to be deposited to the credit of the Treasurer of the Western Shore in the Bank of Baltimore, within the time prescribed, and upon the production of the cashier's receipt for the amount so deposited, certificates of stock of the described before mentioned, and bearing interest from the day of payment, will be issued by the Treasurer of the Western Shore.
No proposal will be received for a less sum than \$500 in amount, nor certificates of a less denomination be issued.
B. HARWOOD, Tr. S. Md.
Aug 8
The Editors of the American, Patriot, Federal Gazette and Federal Republican, Baltimore, the Aurora, Philadelphia, and the National Intelligencer, Washington, will insert the above twice in each week until the first Monday in September next; and forward their accounts.