

their duty as prescribed by law; and the Court of Chancery has been invested with a similar and more extensive power in regard to the care of infants and their estates. *Corrie's Case*, 2 *Bland*, 489. But neither of those Courts, nor any other of the tribunals of the Republic have been, or can constitutionally be clothed with a discretionary power to sell and dispose of the property of any one, infant or adult, merely for his own interest and advantage, apart from the maintenance and education of such infant owner. Such a power is not judicial in its nature; and therefore, cannot be conferred upon or exercised by any branch of the judicial department.

To coerce the payment of debts, and to make sale of property for that purpose; or to provide for, and enforce the application of **206** *an infant's property to his maintenance and education, may well be regarded as the natural course and necessary result of a judicial power; as the proper exercise of judicial functions. But to institute an inquiry as to the propriety of disposing of any property, and the selling of it, and investing the proceeds of the sale in other property merely for the general interest and advantage of its infant owner, without reference to any peculiar circumstances, as in the before mentioned cases of a conversion of one kind of property into another, has nothing of the aspect or character of an exercise of judicial authority about it. Such a proceeding puts in issue, and determines no matter in controversy, either as to the claim of a debt, or of maintenance, or of any other right which had been denied, disputed, or neglected. It has nothing judicial even in its appearance. The proceeding is merely that of a trader, who, upon inquiry, conceives it to be to his interest and advantage to carry his property into the market, and to sell it for the purpose of making a more profitable investment of its proceeds. But the several judicial tribunals of the Republic are unfitted and incompetent to act as traders; they have not been organized for any such purpose, and cannot constitutionally be clothed with any such power. An arbitrary and discretionary power, in a Court of justice, to sell and dispose of the property of a citizen, in any case in which the Court should be induced to believe that it would be for his own interest and advantage, could not fail, in many instances, to be productive of the greatest mischief. But the exercise of such an authority over the property of an infant, would be pernicious in the extreme; not having the means, or the power to object, or to complain pending the proceeding, the helpless infant might be plundered without mercy; and that very Court of justice which was intended as his shield, might be made the instrument of the iniquity.

Upon these considerations, therefore, I am of opinion, that these public Acts, now proposed to be executed, so far as they clothe this Court with a new and more enlarged jurisdiction, must be so