

considered as arising from a sale of the infants' real estate, or only from a sale of the rents and profits of such an estate during a given period, to which alone these infants were entitled; still, this is a legislative regulation in relation to the matter, which no trustee can be allowed, at his pleasure, to violate or disregard; he, of himself, cannot have a shadow of authority to make any application of the proceeds of sale in any way whatever. But, apart from the express provisions of any act of assembly, upon general principles, no trustee, appointed to make sale of property under a decree, in the usual form, directing the proceeds to be brought into court, can be allowed, in any manner whatever, to dispose of them without the express previous sanction of the court. This is a very ancient rule of this court, and a due regard to the interests of suitors, requires that it should be inflexibly adhered to. Therefore, all the causes shewn by this trustee as such, why he has departed from the positive command of the decree requiring the money to be brought in must be wholly disregarded. (d)

But it appears by the proceedings, that *Nicholas Brewer* has been clothed with several offices in connection with the rights of these infants; and that he has acted in two distinct characters. It is a settled principle, that where two or more capacities are vested in one and the same person, each capacity, for the purposes of justice, may be considered in the same light as if they were several persons. (e) *Nicholas Brewer* was appointed a trustee under the will of the late *Richard Higgins*; and I have described what were his rights and duties as regards the estate so placed in his hands for the maintenance of the infants. Considering him as a distinct person, while acting in that capacity, he must be treated, and allowed to account as their guardian, so far as he may have made any application of the proceeds, or in any manner contributed to their maintenance, to the extent of the proportion of the proceeds to which they may each one of them respectively be found to be entitled. In his other capacity of trustee or agent, employed by this court to make the sale, ordered by the decree, he must be charged with the whole amount of the proceeds of sale with interest, from the 1st of January, 1818. As an offset to which, he will be credited with all applications made for the maintenance of the infants, to the extent, and in the manner described; with inte-

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(d) *Bennett v. Hamill*, 2 Scho. & Lefr. 580.—(e) *Coppin v. Coppin*, 2 P. Will. 295; *Johnson v. Mills*, 1 Ves. 283; *Binney's case*, ante 108.