

government to pass any law, or to do any act which shall result in thus divesting any one of his property, or impairing his rights without his express consent. It is a general rule of law, from which no court of justice should permit itself to deviate, that no citizen can, in any way, be deprived of his property without his consent; or otherwise than as a punishment; or as a means of compelling him to pay his debts, and comply with his contracts. If, being competent to consent, he refuses to allow his property to be applied to a public purpose, it cannot, even in that case, be taken from him without an adequate compensation. But, if the owner be incompetent to contract, or to manage his own affairs, a court of justice never undertakes, even to alter the nature of his property from realty to personalty, or the reverse; except from necessity and for his obvious advantage.(b) So too, although this court has been expressly authorized, by various acts of assembly, for the benefit of an infant, or person *non compos mentis*, to have his real estate sold and converted into personalty; yet, as he can give no consent to any such conversion, it is but just, that his rights and interests should be no further deranged or impaired than may be indispensably necessary; therefore, it has been expressly declared, that the proceeds of the sale of the real estate shall, in such cases, pass as realty to the heirs of such infant or person *non compos mentis*, as if no such sale had been made.(c)

An obvious consequence of this mutation of a wife's real estate into personalty, is, that it casts over the property thus changed, by what seems to be considered as the tacit consent or acquiescence

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and particularly the order of February 24th, 1818, allowing to R. and M. Roloson a certain portion of the sum reported instead of the use of the whole sum for life; the proportion of A. Waltemeyer of the residue including interest paid in is found to be \$142 56, for which sum a check in his favour will be ordered.

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Margaret Roloson by her petition stated, that conceiving herself entitled, during her life, to the interest arising from one-sixth of the purchase money received from the sale of the property in the proceedings mentioned, or such part thereof as now remained in the chancery office, she prayed, that the same might be invested in some way for her exclusive use and benefit; so that she might during her life receive the interest thereof, notwithstanding her coverture, for her own separate use; and not subject to the control of her husband, as she will receive no benefit whatever from it if paid to him.

24th February, 1820.—KILTY, Chancellor.—The petitioner is referred to the order of the 24th of February 1818, on her petition with her husband, by which a certain sum was allowed to him in lieu of her interest.

(b) 1 Mad. Chan. 339; High. Lun. 60, 69.—(c) 1800, ch. 67, s. 5; 1816, ch. 154, s. 9; 1828, ch. 26, s. 3; 1829, ch. 222.