the son taking the land an express trustee thereof for the brothers and sisters, the conduct of the beneficiaries in lying by so many years, receiving payment from the brother, and in other ways recognizing his right to the estate, and allowing him without objection to deal with it was such as to preclude them from now asserting any claim, even although the Statute of Limitations did not apply; but that (5) the facts stated shewed an actual sale by *A.* to his brothers in 1839, and then the Statute of Limitations began to run; (6) that the power of appointing persons to value the estate given by the will to the executors was not an arbitrary power depending on personal confidence, and that it was properly exercised by the surviving executor; (7) that the legacies given by the codicil did not form a charge upon the lands; and (8), that the circumstances were such as warranted the Court in quieting the title under the Act, without requiring the applicant to file a bill for the purpose of litigating the matters in question or obtaining the opinion of a jury thereon. *Quære*, in whom did the legal estate vest under the will? *Semble*, that it did not pass to all the children.

Re Curry, 277.

7. In proceeding to quiet a title the evidence established that in 1850 *L.* made a conveyance to one of his brothers of certain land, not that in question, in which he described himself as surviving executor and trustee of his late father, as he was in fact.

Held, that this was not sufficient to render him liable as trustee for the contestants—his brothers and sisters, and those claiming under them—and he could not in any view be considered a trustee of the land for his brothers and sisters, and that in the absence of any proof of fraud the Court would not, after so great a lapse of time open up the family arrangements on the ground of mere inadequacy of value. *Ib.*

8. A testator by his will bequeathed certain legacies of different amounts to his sons and daughters, and directed his "real and personal property" to be sold by auction, and then added "And the household furniture also to be sold by auction, and the proceeds of the sale to be equally divided amongst my daughters."

Held, that the legacies to the sons and daughters were payable out of the mixed fund of real and personal estate.

In re Gilchrist—Bohn v. *Fyfe*, 524.

9. A testator devised and bequeathed his real and personal estate upon trust for the benefit of his wife and children in certain proportions, and directed that in case of any of his children dying, leaving issue, his or her share should be equally divided amongst such issue or should be divided by the will of such child so dying leaving issue as to such child might seem meet so soon