hands] of the heirs; and the land having, for some time after the testator's decease, been occupied under mistake of title by R. and his assigns, who had paid for Adam's maintenance, the heirs could not enjoy the land without making good the charge thereon to those who had thus exonerated them.

In this action it was referred to the Master to take an account of the rents and profits received by one who had occupied land under mistake of title, viz., as assignee of a devisee the devise to whom was void, and to fix an occupation rent to be paid by him, and also to fix the sum to be allowed to him in respect to improvements, and to certain legacies charged by the will on the said land and which he had discharged, and also of payments made by him on account of taxes, and it appearing that in discharge of some of the said legacies less than the face value thereof had been paid.

Held, that in computing interest on the sums so paid in respect of the said legacies, it should only be computed on the amounts actually paid, and not on the face value of the legacies, and further that the account should be taken together so that on one side would appear the disbursements for improvements, legacies, and taxes, and on the other the occupation rent.

It is not as a general thing the best rule, in cases of varying opinion as to value, to reject one set of witnesses *in toto* and to adopt the figures of an opposing set. It is rather to be supposed that neither is exactly to be followed, and that truth lies somewhere between the extremes. *Munsie* v. *Lindsay et al.*, 520.

5. *Will—Description of real and personal estate—Appointment of executors—Executor according to the tenor—Description of land—Maintenance—Charge on land—Infant executors—Devastavit.*]—A testator by his will directed his executors, "hereinafter named," to pay his debts and funeral expenses; and then devised the residue as follows: To his son David "lot 16, concession 7, N. H., real and personal property;" the said David to pay to each of his daughters $500, namely, Janet, Mary and Agnes in two years after his death; Margaret and Ellen at 25, and Christina to remain on the farm, the said sum to be given her when she became of age. No executors were named. Parol evidence was admitted to shew that the land mentioned was in the township of Morris; that N. H. meant the north half, and that it was the only land owned by testator. Parol evidence was also admitted to shew that Christina, though spoken of as a minor, was 23 years old when the will was made, and that she was of delicate constitution and of weak mind.

Held, that there was an effectual disposition of the real and personal estate: that to a disposition of personal estate executors need not be expressly named, but may appear by implication, and that David was executor according to the tenor: that as to the land the parol evidence, which was properly admissible, cleared up any ambiguity as to the description; and the parol evidence also shewed that as regards the provision in favour of Christina, she must be treated as an adult; and that the provision for her would include maintenance.

An infant, whether executor or executor *de son tort*, is not liable for a *devastavit*. Legacies directed to be paid out of a mixed residue are a