Catharine deceased as alleged in said Bill or to any part or portion thereof, and on the contrary, this defendant avers that the said legacy mentioned in the said Will as bequeathed to the said Ann Catharine deceased, was a contingent legacy to be paid to her only son in the event of the said Ann Catharine marrying or arriving at the age of twenty one years as will appear manifestly by reference to the provisions of said Will and that as the said Ann Catharine departed this life unmarried and before she arrived at the age of 21 years, the said legacy sunk and merged in the land devised to this defendant by the said Dennis in the said Will for the benefit of this defendant as the devisee of the said land. This defendant further admits the granting of letters of administration to the said Complainant as alleged in said Bill but utterly denies that the said Complainant is entitled to have or receive from him the said sum of one thousand Dollars together with the interest thereon as alleged in said Bill according to the true construction of the provisions of said Will and the meaning and intention of the Testator as they appear from the language of said Will or otherwise and this defendant also denies that said legacy was or is transmissible to the personal representatives of the said Ann Catharine, but on the contrary avers that in as much as the said Ann Catharine departed this life unmarried and under the age of twenty one years that the said legacy is sunk and merged as aforesaid in the said lands devised to him and for his benefit as devisee of said lands. And this defendant prays to be hence dismissed with his reasonable costs in this behalf most unjustly sustained. And as in duty bound &c

Wm. Motter Solicitor for Defendant

At the same time the said Z. S. Claggett Administrator aforesaid and and the said defendant by his Solicitor aforesaid, filed in Court here the following agreement. viz;

Z. S. Claggett, Adm. &c
vs
John T. O'Byrne

No 1276
In the Circuit Court for Washington County, as a Court of Equity
July Term 1854.

It is admitted in this cause that the Complainants intestate was older than Defendant by nearly two years, and that Complainants intestate died under 21 years of age and unmarried.

Z. S. Claggett for Complt
Wm. Motter Solr for Deft

Family Record.

Mary Jane O'Byrne born June the 4th 1827
Ann Catharine O'Byrne born Nov 6th 1828.
John Terrence O'Byrne born June 11th 1830.
John Cunningham O'Byrne born Dec 26th 1832
Charlotte O'Byrne born July 24th 1834.
Thomas Croghan O'Byrne born June 22d 1839.

Deaths

Thomas Croghan O'Byrne died Sept 8th 1842.
Ann Catharine O'Byrne died June 29th 1845.

Z. S. Claggett Adm. of Ann C. O'Byrne
vs
Terrence O'Byrne

No Equity
In the Circuit Court for Washington County sitting as a Court of Equity.
It is agreed and admitted in this cause that the foregoing are the names, dates of birth and times of decease of those who have died of the children of Dennis O'Byrne, the Testator named in the Will filed in this cause

Z. S. Claggett
W. Motter Solr for Deft

And thereupon further proceedings and upon the premises aforesaid between the parties aforesaid by order of the Court here and in conformity with the act of Assembly was continued from Court to Court until the first Monday of March next.

At which said first Monday of March being the fifth day of the same month in the year of our Lord one thousand Eight hundred and fifty five came again into Court here as well the said Complainant in his own proper person as the said defendant by his Solicitor aforesaid

Whereupon all and singular the premises being seen and by the Court fully considered and mature deliberation being thereupon had the Court filed the following opinion, viz;

Z. S. Claggett Administrator of Ann C. O'Byrne, deceased
vs
Terrence O'Byrne

The Circuit Court for Washington County acting as a Court of Equity
No 1276. Equity

I do not deem it necessary to refer to all the authorities adduced in the argument of this case to shew when a legacy payable out of personal or real Estate is to be regarded as vested or when it will merge for the benefit of the devisee or heir of the land in the event of the death of the legatee before the period of payment arrives; as by the law of Maryland there can be no doubt that the rules in relation to legacies make a distinct line between such as are payable out of real ~~estate~~ and personal Estate; and legacies which they hold to be vested and transmissable when payable out of the latter will sink for the benefit of the heir or devisee when charged on the real Estate; as if a legacy by words of immediate gift but payable at a future period as at the age of twenty one, it is deemed a vested legacy; and if payable out of the personal Estate will not lapse, though the legatee died before the period arrives designated for the payment of it; but on his death will be transmissible to the personal representatives. But if such legacy be charged upon land it will merge in the land for the benefit of the heir or devisee, But the principle is equally well established particularly by the more modern authorities that whenever it is apparent that the gift was not made immediate, but that the time of payment was postponed for the convenience of the Estate and not from considerations of a personal nature applicable to the legatee, the legacy shall not lapse, though the legatee should die before the contingency should happen upon the occurrence of which it is made payable and in such case it does not seem to be necessary when the legacy is charged upon the land, that there should be express words of immediate gift to constitute the legacy so far vested as to make it