

wife, if a contrary opinion is held, then she must account for the value of the crops of similar kind which she took in possession at her husband's death. But she is not the absolute tenant of this property or crops, and if she were, she is not responsible for the loss of this perishable property, she would still be responsible for the value thereof. The old doctrine that a life interest in perishable property which was consumed in the use carried the absolute title or interest, if law now, never is applied to a life interest generally of such property, but only to a specific interest of this kind of property. See Kent Com. 353, 354, & my opinion is that she is entitled only to one third of all the property which was in her possession, including the income and the profits, crops &c. of all kinds, that is to say, in fee of the personal & chattels property one third of the means for her life and of the Land, as above. As to the Land bought, with the facts before, my opinion is that it belongs absolutely to the Deceased notwithstanding it was purchased with money which she might have claimed a portion of. This opinion might be altered by facts existing at the time the deed was made, but which, if any, are unknown to me.

R. H. H. H. H. H.

Thomas Vaughan made his will which has been submitted to me for my opinion. under the following statement of facts:

The widow took possession of the whole estate under the Testator's will, retains it till 1853, when she married Mr. R. H. H. H. H.

The question to be decided is - To what property the widow is entitled; and what is subject to division under the Testator's will.

I regard the will as giving of the whole estate to the widow during widowhood subject to the charge of boarding the children. The direction to return the property is equivalent to saying "I leave" during her widowhood. This construction is fortified by the clause in the will, which says "during the time the property is held in the possession of my wife, I do not wish my children charged any thing for board". Now unless the Testator had intended his wife to enjoy and have the profits of the estate, why should he specially subject it to this restriction.

If I am right in my construction, then it follows that during widowhood -

1st The widow was entitled to enjoy the personal, chattels, slaves &c. of all the estate in kind, subject to the charge of boarding the children.

That after her marriage, the following principles apply -

1st As to the workhouse, farming utensils, household-furniture &c. the like, such as were forthcoming at her marriage to be returned in kind though worn and impaired.

2^d Such as died or were entirely worn out not to be charged.

3^d She to be charged with the principal of such articles as were left by the testator unless used in payment of debts, unless other articles of the same kind are substituted.

4th As to sheep &c. given by the widow is bound to keep them safe unless lost or impaired by casualty.

5th Money bonds to be accounted for without interest unless used in paying debts.

The Widow was not chargeable with any thing for the children except board -

clothing & tuition are proper charges against the children. Under these principles the widow is entitled to all she could make from the property. And is not bound to account for any thing consumed in the use, such as corn, fodder, hay, &c.

6th She is therefore entitled to all the market crops produced by the land during her marriage. The property which now belongs to the testator's estate must be so divided as to give the widow what she would have had had her husband died intestate viz: One third of the land and the use of one third of the slaves for life. And one third of the personal & chattels in fee simple.

The Land having been bought with money, one third of which she was entitled to. She must take one third of the Land by the same title.

I have marked with a x in the accompanying inventory such articles &c. as must be returned, if not worn out. The living slaves (and their increase)