

1884-005

Chancery Causes: Samuel Turner, Junior + Elisha Carr + ux

VS Tempy Turner, Folder 1

Isle of Wight County

Margaret Spruay's admr + al

other surnames: Rawls,
Edwards, Jenkins, Rhodes,
Butler

With Minnie Jenkins & Fethro P. Rhodes as her
sureties in a bond in a penalty of \$1000.00

To the Hon George Sellow Judge of the Circuit Court
of Isle of Wight County Va. Chancery sitting;

Humbly complaining sheweth
unto the court your complainants Samuel Turner Sr
& Elisha Carr & Polly his wife formerly Turner, a daughter
of Samuel Turner Sr deceased; that the said Samuel Turner Sr
departed this life on day of January A D 1881, having
made & published his last will & testament bearing
date on the 8th day of February 1876, which will was
probated in the County Court of Isle of Wight on the
7th day of March 1881, and at the same time Margaret
Turner the widow of said testator qualified in said court
as administratrix with the will annexed of said Samuel
Turner Sr. A certified copy of said will & of the order
of qualification of said administratrix marked A,
is herewith filed & prayed to be taken as a part of
this bill; The testator in the 2nd clause of his ^{said} will uses
the following language "I desire that my beloved
wife Margaret Turner & my daughter Emily Turner
shall have & hold my entire estate both personal and
real together, and use the same for their joint benefit
during my daughters life or while she remains single.
Should she marry or die while my wife lives, at her
marriage or death, I desire what may remain of my
estate to go to and be held by my wife in fee simple."
That the testator at the date of said will was an old man
& his wife Margaret was by many years the senior of
himself & of said Emily. That the estate of said
testator consisted of a tract of land lying in the County
of Isle of Wight containing by estimation acres
adjacent to the lands of

and Sally the Grand wife of J. of Grand, formerly Turner a grand -
- daughter of said Samuel Turner Sr. & daughter of Jordan Turner a
deceased son of said Samuel -

* Consideration that passed to the
said Tempy under said deed
from the said Margaret was
paid by the latter out of funds
in her hands as executor of
said Samuel - deceased -

valued at \$800.00 + personal estate of the value of
1 about \$800.00 to \$1000.00; the latter consisting of bonds +
2 other choses in action of about the value of \$600.00;
3 and chattel property consisting of horses, hogs, + other
4 stock, bacon, corn, fodder, farming implements +
5 household + kitchen furniture + utensils of about the
6 value of \$400.00; the usual chattel property of
7 a small farmer in this part of the country; a large part
8 of which was consumable or subject to deterioration by use.
9 That your complainants cannot state more particularly the
10 value of the said personal estate because the said adminis-
11 trator of Samuel Turner Sr. did not return any inventory
12 or appraisement of his personal estate. That the said
13 Samuel Turner Sr. left as his distributees at law his
14 said widow Margaret + three children, the said
15 Tempy Turner, Samuel Turner Jr. + Polly the wife of
16 Elisha Carr, the said three children ^{+ grandchildren} being the heirs at
17 law of the said Samuel Turner Sr. + the said Samuel Turner Jr.
18 + Elisha Carr + Polly his wife being your said complainants.
19 On the 28th day of March 1881 a few days after the
20 probat. of said will (on the 7th of March 1881) the said
21 Tempy by a deed of that date conveyed to the said Margaret
22 Turner all the interest of the said Tempy under the will
23 of the said Samuel Turner Sr. in the property disposed
24 of thereby. A certified copy of said deed with certificate
25 of recordation annexed marked B is herewith filed and
26 prayed to be taken as a part of this bill; that the only
27 That soon after the death of the said Samuel Turner Sr.,
28 to wit on the day of 1881 his widow the said
29 Margaret intermarried with one P. F. Spivey, + soon
30 thereafter to wit on the 26th day of October A.D. 1881 the
31 said Margaret Spivey by a pretended deed of that date

Exhibit C

Exhibit D & E

1 duly recorded in the Clerk's office of the County Court of
2 Isle of Wight, for the alleged consideration of \$100.00
3 intended to convey unto her husband ^{the said} W. Spivey all
4 the personal estate (except some named articles) & one
5 half of the real estate willed to her by her former husband
6 Samuel Turner Esq. A certified copy of said deed with
7 certificate of recordation annexed marked C is herewith
8 That soon thereafter to wit on the 28th day of November 1881
9 the said Margaret Spivey departed this life intestate, in the
10 said County of Isle of Wight although her husband the said
11 W. Spivey made an abortive ^{attempt} to probate a will of the said
12 Margaret giving to her said husband all her estate, derived
13 under the will of the said Samuel Turner Esq. she having no
14 other estate. That as appears from the certificate of
15 recordation annexed to said deed C from the said Margaret
16 to her husband the said W. Spivey the same was not
17 recorded until the 4th day of January 1882 after the death
18 of the said Margaret as aforesaid on the 28th of November
19 1881, nor was the same recorded until after the failure
20 to probate her will as aforesaid, nor was the privy examin-
21 ation of the said Margaret though a married woman on
22 the date of the execution of said deed ever taken on
23 and your complainants charge that the said deed was null & void & nothing passed
24 certified. That one William A. Spivey qualified as the
25 thereby from the said wife to her ^{said} husband, & he is to be held liable of its nullity that
26 administrator of the said Margaret Spivey on the
27 day of 1882 and returned on the 30th & 31st day of
28 January 1882 respectively the said William A. Spivey as
29 administrator of Margaret Spivey returned to the Clerk's
30 office, an inventory & appraisement & account of sales
31 of the estate of the said Margaret Spivey certified
copies of which marked respectively D & E are herewith
filed & prayed to be taken as a part of this bill.

1 That the said Margaret Spivey left as her sole distribu-
2 tee & heir at law Nancy Butler an infant child by the
3 former marriage of the said Margaret with one Alexander
4 Butler. That since the death of the said Margaret
5 Turner, the estate of the said Samuel Turner Sr. has been
6 committed for administration de bonis non with the
7 will annexed to G. B. Edwards Sheriff of this County.

7 That your complainants are informed & so charge that
8 the 2nd clause of said will admits of but one of two
9 possible constructions, to wit:

1st

10 That it gives to Margaret Turner & Tempy Turner a joint
11 estate for their joint lives, with a contingent remainder
12 in fee simple to the said Margaret on the death or
13 marriage of the daughter Tempy in the lifetime of
14 the said Margaret, in the whole estate, except so
15 much of the personal estate as was consumable or
16 deteriorated by use, or,

2nd

17 That the said Margaret & Tempy took a joint estate
18 for their joint lives, with a remainder for life to
19 the said Tempy on the death of the said Margaret in
20 the lifetime of the said Tempy, with a contingent
21 remainder in fee in the whole estate except the
22 portion of the personal estate as aforesaid to the said
23 Margaret on the death of the said Tempy ^{the} in lifetime of
24 the said Margaret.

25 That the said Samuel Turner Sr. under the 1st con-
26 struction died intestate as to his whole estate, except
27 the personal estate as aforesaid on the death of the said
28 Margaret in lifetime of the said Tempy, as has
29 happened.

30 That the said Samuel Turner Sr. under the 2nd con-
31 struction died intestate as to his whole estate except

the personally as aforesaid, on the death of the said Margaret
in the lifetime of the said Tempy, subject to an interest in the
same in the said Tempy for her life. That under the 1st
construction the interest of said Margaret & Tempy terminated
in said estate on the death of the said Margaret in the
lifetime of the said Tempy & that under the 2nd construction
the interest ^{of said Margaret} terminates on the death of the said Tempy,
the said Margaret having acquired the life interest of
the said Tempy by purchase under the aforesaid Exhibit B.
That under the 1st construction as the said Margaret
died possessed of no estate except what she derived
from her husband Samuel Turner Jr. the whole of said
estate except the personally as aforesaid passed to the
said Samuel Turner Jr. Polly ^{Tempy Turner} Barr & Sally W Brawls in
equal portions absolutely & in fee simple, & the said
estate is so held in trust for them by the said administra-
tor & heir at law of Margaret Turner;
That under ^{the 2nd} construction it passes to the said Samuel
Turner Jr. Polly Barr & Sally W Brawls ^{& the assigns or heirs at law of the} on the death or
^{said Tempy} marriage of said Tempy, until which time the said estate
is held in trust for them by the said administrator &
heir at law of Margaret Turner.
Your complainants are informed & so charge that
they have a right to ask the aid of this honorable
court to have the said will construed & the rights of
the parties thereunder ascertained & the property and
funds in the hands of the ^{heir} administrator of the said
Margaret Turner decreed to your complainants and
the said Tempy Turner & Sally W Brawls, if the court
should adopt the 1st construction or that the court will
decree that the same should be invested or otherwise
secured so as to be forthcoming on the death of the

Turner & Co

Spivey, Adm of ds

said Tempy Turner should the court adopt the
2nd construction, as the same is in danger of being
wasted. In tender consideration whereof, & for as much
as your complainants are without remedy at law & can
only be relieved by the aid of this honorable court of
Chancery where matters of this sort are cognizable,
to this end your complainants pray that the said
Tempy Turner, S T Brawls, & Sally W Brawls his wife.
S B Brawls administrators de bonis men with the
will annexed of Samuel Turner deceased, W A Spivey,
administrator of Margaret Spivey deceased, M K Spivey,
Jovin Jenkins & Jethro P Rhoades, and Nancy Butler, the
last an infant under twenty one years of age, by some
one appointed her guardian ad litem to defend her
interest in this suit, may be made parties defendant to
this bill & be required to answer the same;
That this honorable court will construe the said will and
ascertain the rights of the parties thereunder, & that such
other & further relief may be granted in the premises as
to the court may seem meet, & may suit the equity of
the case, & your complainants will ever pray &c
C B Hayden pr q

Complainant's Bill

March Rules 1882
Bill & bills filed, answer, etc
to be made in answer to N. B.
Brawls appointed guardian ad litem
to the infants. Answer filed

April. Rules 1882. Bill
to return for costs? & set
for hearing in 20th
court.

April Term 1882 -
Final Verdict -
"

To the Honorable George Blow Judge of the Circuit
Court of Isle of Wight County

Your Petitioners

Samuel Turner Jr & Elisha Carr his Polly his wife formerly
Turner, humbly represent to the court that at March
rules 1882 they filed in this court their Bill of complaint,
seeking to obtain the construction of the will of
Samuel Turner deceased, against Lemmy Turner, S. L.
Krawls & Sally W Krawls his wife L. B Edwards admr
de bonis non with the will annexed of Samuel Turner
deceased W. F. Spivey admr of Margaret Spivey.

W. F. Spivey & Nancy Butler, the last an infant under
twenty one years of age.

That in said Bill your
Petitioners alleged through mistake that the wife of
said S. L. Krawls was named Sally W instead of
Nancy W her real name.

Your Petitioners pray
that the said Nancy W Krawls wife of said S. L. Krawls
by her said proper name of Nancy W Krawls may
be made a party defendant to said Bill & required
to answer the same, & that the said Nancy W Krawls
& the other defendants to said Bill may be required
to answer this petition & your Petitioners will
ever pray &c

Signed Samuel Turner for

Elisha Carr & Polly his wife

per C. B. Hayden their Atty

Turner & Carr et al

^{vs}
Spivey, Admr et al

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Petition
of
Samuel Turner & others

To the Honorable Geo Blinn Judge of the
Circuit Court for the County of Isle of Wight,
In Chancery sitting:

The Answer of Nancy
Butler an infant daughter of Alexander
Butler & Margaret his wife by N P Young
her guardian ad litem to the bill of
complaint in said court exhibited
by Samuel Turner for et als vs her et als:

This defendant answering
says that she is an infant under twenty
one years of age, submits her interests in
the premises to the protection of this
honorable court, & having answered
prays hence to be dismissed with her
costs in this behalf expended, & she will
ever pray--

Signed--

N. P. Young guardian
ad litem

Turner & Carnes
Spivey, Adm^{rs} & al^s

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Infants' Asylum

March rules 1887.

Filed

To the Honorable George Blount Judge of the Circuit Court of
the State of North Carolina

The joint and several answers of
S T Rawls and Nancy W Rawls his wife to the Bill of
Complaint and Petition in said Court exhibited by
Samuel Turner Sr & others, against them & others;

These defendants saving & reserving all right of
exception to the many errors & imperfections in said
Bill contained, & for answer thereto & to said
Petition, or to so much thereof as they are advised
it is material for them to answer, answering say;

That your respondents admit to be true the
general allegations of said Bill, especially as to the
death, & testacy of Samuel Turner Sr, & the provisions
of his will, & the construction of said will as set
forth in said Bill; and that under said construction
the said Samuel Turner Sr died intestate to the extent in
said Bill alleged; that the said Samuel Turner Sr
left as his heirs at law Lemmy Turner, Samuel Turner Jr,
Polly Carr wife of Elisha Carr formerly Turner,
children of the said Samuel Turner Sr & your said
respondent Nancy W Rawls wife of S T Rawls,
formerly Nancy W Turner, a grandchild of Samuel Turner Sr,
& daughter of Jordan Turner a deceased son of said
Samuel Turner Sr, who predeceased his father, as
alleged in said Petition, & not Sally W as alleged
erroneously in said Bill. That your respondents
unite in the prayer of said Bill, & having answered
pray hence to be dismissed with their costs in this
behalf most unreasonably extended & they will ever
pray &c

S T Rawls
Nancy W Rawls

State of Virginia;
Nansemond County, to wit:

I J. H. P. Daugherty
a Notary Public

for the county aforesaid in the State of Virginia, do
certify that S. S. Brawls & Nancy W. Brawls his wife
personally appeared before me in my said county,
& severally made oath to the truth of the statements
contained in their foregoing answer, to the best
of their knowledge & belief,

Given under my hand this 12th day of April 1882

J. H. P. Daugherty
Notary Public

Turner & Carr et al
vs
Spivey's Adm^r et als

31 30 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1

Answer
of
S. S. Rawls + wife

with his reasonable costs in this behalf
expended, and he will ever pray &c.

Witness my hand

William A. Spivey, Attorney

State of Virginia

County of Isle of Wight to wit:

This day William A. Spivey Attorney of
Margaret Spivey deceased, whose name is above
written personally appeared before me and
made oath that the statements contained
in the said return so far as made of
his own knowledge are true; and so far
as made from knowledge or information
derived from others believe to be true.
Witness my hand this 14th day of October
1883.

W.S. Hallen

Notary Public

Saml Turner Jr.

Answer of
Margt. Swings Am.

Saml Turner Jr.

July 22. 1818

The Demurrer and Answer of Wm. A. Sweeney
Administrator of Margaret Sweeney deceased, to a
bill of complaint exhibited against him and
others in the Circuit Court of Isle of Wight
County, by Samuel Turner Jr. Elisha Corl and
and Polly his wife.

The defendant says that the Bill is not
sufficient in law.

And this respondent reserving to himself
the benefit of all just exceptions to the
said bill for answer thereto, or to so
much thereof as he is advised that it is
material he should answer and says

That by virtue of the said last
will and testament of Samuel Turner Sr.
deceased, and the deed of bargain and sale
from Sinda Turner to his intestate (who was
Margaret Turner) dated 28. March 88, (Exhibit
"B" with the Bill) the said Margaret in her
life time became the free single owner of the
real and the absolute possessor of the personal
property devised and bequeathed by the second
clause of the said last will and testament of
Samuel Turner Sr. deceased, which property was and
personal at her death became vested in this
respondent as her personal representative and

in the infant Defendant Sarah Fuller as her
sole heir at law and Distributee.

That it was the intent of the said testator
Samuel Turner Sr by the said will to dispose
of his whole estate real and personal - an
intent manifested by the language of the will
itself, which is legally and reasonably sufficient
in its meaning for the purpose. - And this evidence
utterly denies that the said testator died intestate
as to any portion of his estate.

It is true as is alleged in the Bill, that
"the testator at the date of said will was an
old man and his wife the said Margaret was
by many years the junior of himself and of said
"Smy", and he very naturally believed that his
wife the said Margaret would survive the said
daughter Smy, but in order to exclude the
possibility of a doubt as to the persons for
whom his fortune was intended he gave "what
may remain" of his whole estate to said
daughter or marriage to his wife by the language
"to go to and be held by one wife in her single
state" it is remembered that his son by a former
marriage was grown and that ^{one} of his
daughters were married; the gift of his property
to his surviving widow and single daughter
shows a very proper, natural and just disposition,
and one of which no one can reasonably

complain.

That the first construction of the said will is clearly not to be maintained by the Court. It is clearly not maintainable. The death of the respondent intestate Margaret Spivey, formerly Turner, does not terminate the estate because by the clear, express and unmistakable language of the will the estate is to continue certainly during Emily Turner's life, or while she remains single, and Emily Turner is now living, and is an unmarried woman.

The second construction cannot be maintained, because the testator Samuel Turner Sr. disposed of his whole estate real and personal by his said will, and there can be no remains after the whole has been disposed of. There can be no remains after a fee simple.

The said will taken in connection with the deed of bargain and sale from Emily Turner to Margaret Turner (that respondent intestate) bears out one of these constructions, by either of which the said Margaret Turner took a fee simple estate in the real and an absolute estate in the personal property, which under the Virginia Statute of Descent and Distributions has descended to and become vested in the respondents and Nancy Butler the infant defendant, as the sole distributee and heir at law of the said Margaret Spivey.

First. The said will created a joint estate in the said Jemmy Turner and the said Margaret for the life of Jemmy Turner or until her marriage with remainder in fee simple to the said Margaret. The language "I desire that my beloved wife "Margaret Turner and my daughter Jemmy Turner" shall have and hold my entire estate both personal and real together, and use the same for "their joint benefit during my daughter's life, or while she remains single should she marry or die while my wife lives," creates no condition precedent or contingency limiting Margaret Turner's remainder in fee simple. It merely designates the period during which the joint estate is to continue and at the expiration of which the remainder is to vest. Jemmy Turner's death or marriage being a certain future event, Margaret Turner's remainder is vested and not contingent upon the happening of the event in Margaret Turner's life time, which the subsequent language of the testator clearly shows for he said, "at her marriage or death, I desire what may remain of my estate to go to and be held by my wife in fee simple." or

Secondly. The said Margaret Turner being seized of an estate of freehold in the real estate devised by the said will, i.e. during the life of Jemmy

Turner or until her marriage, with remainder to herself in fee simple, which is equivalent to a remainder to her "heirs" or "heirs of the body" by virtue of the "Rule in Shelley's Case" has an estate in fee simple absolute in the said real estate. And the same Rule determines the title to the personalty. or

Thirdly. That by the second clause of the said will and its language clearly legal and sufficient for the purpose, a fee simple in the real and an absolute property in the personal estate is devised and bequeathed to Fanny Turner ^{and the gift of "what may remain" at Fanny Turner's death or marriage is void for uncertainty.} and Margaret Turner as joint tenants.

And inasmuch as Fanny Turner conveyed her interests therein to Margaret Turner in her life time, the whole of the said real and personal property is now vested in this respondent as the personal representative of the said Margaret and in the said Nancy Butler her sole distributee and heir at law.

Notice is hereby given that the Court will be asked to allow the respondents' attorneys a reasonable fee for their legal services in this cause out of any money or property under the control of the Court in this suit.

And having fully answered the complainants' bill prays to be hence dismissed

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF ISLE OF WIGHT COUNTY--GREETING;

You are hereby commanded to summon *Tempe Turner, Wm. A. Spivey Admor. of Margaret Spivey Adm; N.H. Spivey & B. Edwards Sheriff Admor. de bonis non of Samuel Turner Adm; and Nancy Butler, the last an infant under 21 years of age*

if *there* be found within your bailiwick, to appear at the Clerk's Office of our Circuit Court, for our said County of Isle of Wight, at the Rules to be holden for the said Court, on the first Monday in *March* next, to answer *the Bill in Chancery of Samuel Turner Jr. and Elisha Carr and Polly his wife formerly Turner*

And have then and there this writ. Witness, **NATHANIEL P. YOUNG**, Clerk of our said Court, at the office aforesaid, this *17th* day of *February* 188*7*, in the *106th* year of our foundation.

N. P. Young Clerk.

Not finding the within names M. & Spoon
at his usual place of abode. Enquired
the within summons by delivering a true copy
of said summons to Miss Paul Spoon, the sister of
M. & Spoon and Member of his family over the age
of 16 years explaining the same to her. File 25-
1882.

A. B. Edwards Dkt

For A. B. Edwards Dkt

Saml. Turner et al.

To. J. Turner.
in ch.

Temple Turner et al.

To March Rk. 1882.

Hayden Ky.

Executed by delivering
to the within names
Temple Turner et al.
Spoon adms of Mangel
Spoon Decd. Man of
Bulla each a true
copy of the within
summons. File 35th

1882

A. B. Edwards Dkt
For A. B. Edwards Dkt

Samuel Turner and Sons

v.
Tempy Turner & others. -

On the motion of the Defendant
William A. Spivey Administrator of
Margaret Spivey deceased leave is
given him to file his answer to
the Complainants Bill within thirty
days from this date. -

Sund. June 1st

W. 2/3

Temp. June 1st

Enter 20. (April 8th 2)

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Entered 9

Turner & Can & wife

"
Spicer, Adm & Co. }

On motion of
the Plaintiff, leave was given them
to file their Petition on motion
of the Defendants - S J Rauls, & S
Nancy W Rauls leave was
given them to file their answer
to the Plaintiff. Bill said
Petition & the same was
accordingly done +

Turner Can stop

16

Spencer, Schuman
et al -

Order
April 1882
To be entered

Geo. Brown 2
—

Entered 1882

114

Samuel Turner Jr, Elisha Carr and
Polly his wife. -

^{v.}
Tempy Turner S. J. Hawks and Nancy W.
Hawks his wife, L. B. Edwards Administrator
de bonis non with the will annexed of
Samuel Turner Sr. deceased, W. A. Spivey
Administrator of Margaret Spivey de-
ceased, N. K. Spivey, Irwin Jenkins,
Jethro P. Rhodes and Nancy Butler, the
last an infant under twenty-one
years of age. -

This cause which has been
regularly matured and set for hearing
at rules according to law, came
on this day to be heard on the bill
and the exhibits therewith filed, the
answer of N. P. Young guardian ad
litem for the infant defendant Nancy
Butler, the answer of S. J. Hawks and
Nancy W. his wife, the answer of
Wm. A. Spivey Administrator of Margaret
Spivey deceased, with general replica-
tions to said answers, the Petitions
of Samuel Turner Jr, Elisha Carr and
Polly his wife, and was argued by
counsel -

On consideration whereof, the Court

being of opinion that by the last will
and testament of Samuel Turner Sr.
deceased, Margaret Turner and Tempy
Turner were entitled to a fee simple
in the real estate and an absolute
property in the personal estate of
~~her~~ the late Samuel Turner Sr. deceased,
and that the limitation over of
whatever remains at the death or
marriage of Tempy Turner is incon-
sistent with and repugnant to
such fee simple and absolute property
in said real and personal property
for uncertainty, and the conveyance
from Tempy Turner of her whole inte-
rest under the said will to the said
Margaret Turner gave to the said
Margaret Turner the entire estate in
fee simple which estate upon the
death of the said Margaret Turner
became the property of her sole heir
at law and distributed the said
infant defendant Nancy Butler.
Therefore it is adjudged ordered and
decreed that the complainants' Bill
be dismissed and that Anna Spivey
Administrator of Margaret Spivey
deceased recover of the said complainants

ants his costs by him about his defence
in this behalf expended.

The Court doth allow to William S.
Holland and to Robert N. Prentiss counsel
for the defendant, Nancy Butler a fee
of One hundred and fifty Dollars for their
services in this cause to be paid
by Wm A. Spivy Administrator of
Margaret Spivy deceased out of any
funds or property in his hands belonging
to the said Margaret Spivy's estate -
And the cause is ordered to be
stricken from the docket.

Saul Turner Jr. &c

3
1. 3 3 3
Deer

Thopy Turner &c

Enter 21. April 1884

Gr. 5. 13 1300.

Entered # 24

Samuel Turner by his Will bearing date on the 8th day of Feb 1876.
probated on the 7th day of Mar 1881,
after a clause of revocation; by
the 1st Clause directs the payment of
debts.

The 2nd Clause is in the following language:
"I desire that my beloved wife
Margaret Turner & my daughter
Fanny Turner shall have &
hold my entire estate both
personal and real together &
use the same for their joint
benefit during my daughters
life or while she remains single
should she marry or die while
my wife lives at her marriage
or death I desire what may re-
main of my estate to go to and
be held by my wife in fee simple
3rd Clause Appoints R. H. Ashburn
Exor. Witnessed by J. D. Branch
& L. W. D. Watkins.

Lam of opinion that Margaret
Turner the widow & Fanny Turner
the daughter of the Testator under
this Will took a joint estate for
life in the real & personal estate
during the joint lives of the said

widow and daughter, remainder
in fee simple to the widow con-
tingent on the death or marriage
of the daughter in the life time
of the widow.

The Testator died intestate as to
the remainder on the death of the
widow in the life time of the daughter.
I am informed that Margaret
Turner has departed this life
leaving the said Pempy Turner
surviving.

That said Pempy Turner by
her Deed bearing date on the 28th
day of March 1881, conveyed to the
said Margaret Turner all the
interest of her, the said Pempy, under
the Will aforesaid in the property
"given, devised or bequeathed" thereby.

I am further informed that
said Margaret Turner has since
the date of said Deed intermar-
ried with _____ and

has departed this life testate
having by her will given her whole
estate to her husband, who claims
that the said Margaret under
the will of the said Samuel

7244

1881-2

Turner & the said conveyance
of Penny Turner was entitled
to the whole estate of Samuel
Turner & that the same passed
to him under the will of said
Margaret.

I am informed that the said
Samuel Turner left three
children, to wit said Penny;
Polly who intermarried with
Elisha Carr & Samuel Turner
the two latter reside at Wind.
sor.

My opinion is that on the
death of Margaret Turner
the widow of Samuel Turner
the whole estate of the latter
passed to his three children
aforesaid in fee simple that
the interest of the said Penny
thus derived did not pass
to Margaret Turner under
the aforesaid conveyance of
Penny.

In giving the opinion that Mar-
garet Turner only took the life
estate under her husband's will
in the event of her predeceasing
the marriage or death of Penny Turner

it was intended the the first
taker should have complete power
of disposition of the whole or any
part as he might choose of the
subject bequeathed, quote ap-
provingly (140) Modification of
the doctrine & gives the opinion that
it is not applicable where the
property or part of it consists
of household furniture or other
articles of a perishable nature or
where the words would be appli-
cable to the Expectant diminution
of the property by the use and wear
of the first taker & such would be
the consumption of the property
were given to the first expressly
for life, & that there was no case
in which the doctrine was applied
where the prior interest was expressly
limited in such terms, that is to
a life interest.

In accord is 1st Farman on Wills
363. 3rd Redfield 392 - 393

Where the first taker is limited
to a life interest there is no re-
maining in a remainder to the 2nd
taker, & where the property is personally
liable to be diminished in value by

use there is no repugnancy nor uncertainty as to the subject because the second taker take the whole corpus, what is left.

Jarman quotes Cooper or Williams where the testator gave personal property to his wife for life & what she had left at her death to his next of kin; gift over sustained. Gibb's? But testator bequeathed the residue to his wife & her assigns & directed her to employ the interest & proceeds thereof for her own use & benefit, & after her decease or marriage he gave what should be remaining of such residuary moneys, gift over sustained. Under *Grinnell* will the first takers were to hold the property & use the same for their joint benefit with remainder over to the wife on the death or marriage of the daughter in the life time of the former.

Constable vs *Bull* 21d 354 There all the testator was a devise & bequest of real & personal estate to his wife for her sole & separate use and benefit, & "at the decease of my

wife whatever remains of my said estate reffect to go to certain other persons.

Sir J. K. Bruce, B. C., said the only question seemed to be whether the words "whatever remains of" had the effect of preventing the gift to the widow from being construed as a gift of a life interest, for that without these words the subsequent bequest would have the effect of so reducing the interest given to the widow: that there were several meanings capable of being rationally attributed to these words which would be inconsistent with the construction giving to the widow the power of disposing of the property, and that he thought the gift over was good. The construction was

approved & followed by Sir C. Hall in *Bibben v Potter*

If the gift of what shall be left is preceded by a power of disposition or appropriation reserved to a trustee or prior legatee in favor of particular object, the expression evidently points to that

portions of the property which shall be unappointed or unappropriated under the power.

As in *Surman v Surman* where a testator bequeathed his personal estate to his wife for life or widowhood, with a power to her to apply the same to her own benefit & the maintenance of A & B during minority; & at her death or second marriage, he gave the same, or so much as should then remain, to certain persons; this was held to be a good bequest of the personal estate unapplied to the prescribed purpose. *Ibid* 365. Under *Turners Will* there was a joint power given the Mother & daughter during their joint lives for their joint benefit & as in *Surman v Surman* the unappropriated property was given over.

Lancashire v Lancashire

It will be observed, that in these cases the words seemed or were considered to provide for carrying over everything that was not

*Don't know
S. 84 - 1894 649
- 1894 1136 -*

disposed of under the power, and, consequently nothing having been disposed of, the ultimate limitation carried the whole subject of gift. Ibid 365.

2nd Redfield on Wills ⁸⁹⁻ 392, 393

in accord with Jarman as to validity over of what remains of personal property after life estate therein quoting Barton vs Barton & the cases quoted by Jarman gives a more full account of Surin or Surma

³⁹⁴ from which it appears that the first taker had full power to sell the property absolutely & apply any part of the Capital for her own benefit & the maintenance of the parties named & that the remainder of the capital as well turned over. The ~~author~~ adds that this "seems to be a just & sensible rule upon the subject".

Scott vs Fosseylyn quoted as similar case Ibid 394.

The ~~author~~ after stating generally the proposition that after an absolute & unconditional

disposition of the property & the
first & after, any limitation
over of the same estate after
the death of the first taker will
be void for repugnancy, and
But this is very much matters
of construction & the whole will
is to be considered together, & to be
supposed to have all been in
the mind of the testator when
he penned each separate
provision. 394 & 395

In this mode of viewing the
matter, no invincible repug-
nancy will occur in any such
provision 395 *ibid* note 42.

Quoting cases (Note 40 *Ibid* 395
2nd Forman 14 Note 1

Notice extent of Modification of Restraint on
alienation - as giving total alienation a bank.
Reply --

In Harrison v Harrison - 1845 - 2 - Exor 1 -
"In the utmost confidence in my wife, I
leave to her all my worldly goods to sell, or
keep for distribution amongst our dear
children, as she may think proper -
My whole estate real & personal are left
~~to her~~ in fee simple to her: only request-
ing her to make an equal distribution
amongst our heirs: & desiring her to do
for some of my faithful servants, whod-
ever she may think will most conduce
to their welfare without regard to the
interest of my heirs - Held the wife
took on a life estate -

Burhan exr v Woodcock, exr - 1840
10 - Leigh - 128 - testator gives the
residuum of his estate real & personal to
his wife for life & after her death gives
the same, as the land as all the other
property remaining at her decease;
over - held the will gave the legat-
ee for life (widow) no absolute power
of disposal & remainder good - Stock
& remaining in kind, kept sold, goes
to remainderman

Wootton v Redd exr - 12 - Exor 196 for
important rules in construction of will -

May 4 Joynes - 20th Feb - 1892 - 1871 - "I give to
My beloved wife, ^{& excellent} subject to the provisions hereafter
declared, my whole estate real & personal &
especially all real estate which I may hereafter
acquire, to have during her life, but with
full power to make sale of any part of the
~~estate~~ estate & to convey absolute title to the purchaser
upon the purchase money for investment or
any purpose that she pleases: with on this
restriction, that whatever remains
at her death shall after paying any
debts she may owe, or any legacies she
may leave be divided as follows (limited
to children & grand children -

held up to a fee simple & absolute
estate in the real & personal estate &
limitation ^{over of my best remains & the death} void for repugnancy -
Samuel's dissent see Convey. Radwin
his Argument in favor of absolute estate
in this form - Alfred Jones do as to
Meaning of "Use"

Barthdale & White et al - 1877 - 28th Feb - 22nd
testator gives to each of his daughters & names
certain slaves, certain other personal property & a
money legacy to her & her heirs forever By a
subsequent clause gives all the balance of his
estate ~~real & personal~~ real & personal to be equally divided
among his children before named, which

he lends to them during their lives,
& at their death to be equally divided
among their children, but should
either or any of them his daughters die
without an heir of their own body, it is his
will that all the property loaned or
given them be equally divided
among his grand children." Held
the daughters each take the property &
Money given them in the former
clauses absolutely: & their right
thereto is not cut down or restrict-
ed by the concluding provision
of the 9th (subsequent clause as above -
that one applies to the property
embraced in that clause -
2. Important rule in construing
different clauses -

NB

I should be remembered that the cl.
language "what ~~is left~~ may remain"
refers solely to the death of the ~~testator~~
in the life time of ~~the wife~~ ^{the wife} whatever
in that event may have been its
meaning, has no application to
the present condition of things; ~~the wife~~
Surviving the wife -

Missionary Society M E Church & (alms -
1879 - 32 Eccl - 357) - Limitation over
after absolute power of appropriation of personal
effects of sole of real & personal estate held
to be void -

Reynolds v Lee Inf 1888 - 8th Law
Journal 608 1888 - 649.

Limitation over held good, although
properly bequeathed widow during natural
life or widowhood, to hold a disposal
of at her discretion - quote last case &

May v Jones 20th Eccl 692 - 22 - Meins
Institute 2^d ed: 969-70 - my copy 1136
letter authentic, makes limitation void
where first taken is permitted to use &
dispose of the subject absolutely at her
pleasure - or if the limitation over
is of so much as may remain
undisposed of - (not as the may
leave a may remain) -

2 Hall v Olin 11 Maine - 15 - Am Law Rev 359.
Testator left his estate to his wife during
her life to hold & use it, the same as if absolutely
hers; but to be divided at her death equally
amongst the testator's surviving brothers & sisters.
He added: I wish it distinctly understood that
I place no restriction upon my said wife
in regard to her use of my said estate, desiring
& intending that she shall use & expend every
dollar of the same if necessary for her care, comfort
or support - Held the will executed
the surviving brothers & sisters of the testator all
the estate left at the death of the widow.

1

Samuel Turner died in the Fall of
1881 leaving surviving

His Wife, his daughter Lemmy
and two other children Samuel,
Polly (Mrs. Carr) and a grandchild
Nancy Rawles who was Nancy Turner
the daughter of his deceased son, Jordan
Turner.

He died leaving an estate worth some
\$1800, consisting of realty valued at \$800
and personally valued at some \$1000.

By the 2^d clause of his
will he disposed of his estate as follows

" I desire that my beloved wife,
Margaret Turner and my daughter,
Lemmy Turner shall have and hold
my entire estate both personal & real
~~together~~ and ~~to~~ use the same for their
joint benefit during my daughter's life
or while she remains single. Should she
marry or die while my ^{wife} ~~life~~ lives
after her death or marriage I desire
what may remain of my estate to go to
and be held by my wife in fee-simple.

Not very long after

the death of Samuel Turner, born -
on the 28th Day of November, his widow
Margaret Turner died, leaving sur-
viving her, the aforesaid Lemmy Turner.

Samuel Furmen was at the date
of his will an old man, and both he & his
daughter Lemby were much older than
his wife Margaret.

The 2^d clause of his will having
devised and bequeathed his "entire estate"
to Margaret & Jemmy so that they might
have and hold it - together and use it for
their joint benefit - during the daughter's
life time, or whies - she remained single
~~and as she died many years before my~~
~~and having added~~ ~~remained unmarried for a number of~~
~~years after at her marriage or death I deene~~
~~considered that should she, Jemmy, the~~
~~whole of my remaining estate be so~~
~~I am satisfied in the life time of Margaret~~
~~and be held by my wife in fee simple~~
~~not the wife then or what remained of the~~
~~estate was to sell his wife in fee, and~~
Margaret - Jemmy the wife having died
in the life time of Jemmy - having pre-
deceased Jemmy instead of Jemmys hav-
ing predeceased her a Bill is brought
to construe this clause of the will and
to determine how the estate shall be dis-
tributed.

It will be remembered that Samuel
Turner was a very old man, that his

Daughter Tempy was also settled that
his wife was younger than both. Con-
sidering the ages of the parties and the nat-
ural & usual order of things we might ex-
pect - the old man to die first - his daugh-
ter next - & his wife next and last. His
will is clearly framed on this view.

He gives his entire estate both real & per-
sonal to his "beloved wife Margaret & his
daughter Tempy to have and to hold together
and to use the same for their joint ben-
efit" during the daughter's life and whilst
she remained single for if she marries
whilst his beloved wife Margaret is living,
her interests in the estate ceases & if she
dies whilst his ~~to~~ beloved wife Marya-
ret is living, her Tempy's interests in
the estate ceases, but "if Tempy dies, or
(2) if Tempy marries before she dies then
what remains of his estate is to go to his
beloved wife Margaret ^{in fee}. No provision
is made, no will is expressed if Margaret
marries, or dies before Tempy. Why.
One reason must be, because he
thought in the natural order of things that
~~Tempy~~ Tempy must & would die before
Margaret - & he was making provision
for Margaret in the event of Tempy's
death.

Now under these circumstances the will is

made, and the Bill alleges that only one of two constructions can be placed on it; viz

1. That it gives to Margaret Turner and to Tempy Turner a joint-estate for their joint-lives with a contingent-remainder in fee simple to Margaret on the death or marriage of the daughter Tempy in the life time of the said Margaret in the whole estate, except so much of the personally as was consumable, as determined by the use, or
2. That the said Margaret & Tempy took a joint-estate for their joint-lives with a remainder for life to the said Tempy on the death of the said Margaret - in the life time of the said Tempy with a contingent-remainder in fee in the whole estate except the portion of the personal estate apportioned to the said Margaret on the death of the said Tempy in the life time of the said Margaret.

And between these two constructions we think the first is correct and that Margaret Turner the widow, and Tempy Turner the daughter took a joint-estate for life in the real & personal estate during the joint-lives of the said widow & daughter remainder in fee simple to the widow contingent on the death, or marriage of the daughter in the life

time of the widow, and as Margaret died before Jemmy, this joint-estate ended on the death of Margaret; and at the death of Margaret, the remainder in fee never became vested, and Samuel Furmen died intestate on the happening of this contingency.

But the Defendant say, this construction can not prevail because Samuel Furmen has disposed of his whole estate real & personal and that there can be no remainder after the whole has been disposed of - that there can be no remainder after a fee.

Because "Jemmy Furmen's death, or marriage being a certain future event - Margaret Furmen's remainder is vested & not contingent - that hence the remainder over is void.

This raises the question When do Devises that are, apparently for Life, become absolute, and confer the fee of the realty & the absolute dominion of the personally upon the Devisee, and when are limitations over void for uncertainty?

The Law upon this subject is as well, as clearly and as forcibly expressed by Judge Foster in Bennets Exors v Stades our author 3 Leigh p 384 as it can be found anywhere. Here, he says

" From the earliest times it has been among the received doctrines of the common law that an absolute and unqualified power of disposing by deed conferred by will and not controlled or explained by any other provision should be construed as a gift of absolute property. In this the law but corresponds with the dictates of common reason. For every man of ordinary capacity would understand a power to dispose of a thing as he pleased, as a gift of the thing itself and hence every one who uses the phrase without qualification is understood by law as intending a gift. The power of absolute disposition is, indeed the eminent quality of absolute property. He who has the absolute property, has, inseparably, the absolute power over it; and he to whom is given the absolute power over the estate, acquires thereby the absolute property; unless there is something in the gift which negatives and overthrows this otherwise irresistible implication. Thus a devise to A. to dispose of at his will and pleasure, gives a fee; and devises to A. to dispose of for the payment of debts, or to give, sell, or do otherwise at pleasure an estate gives an absolute estate even in land 4 Com. Dig. 161. So, a

devise & be at the discretion of a person
without any express disposition to him,
otherwise than to declare that the lands
are at his discretion gives a fee. . . .

..... So, though a devise & a wife for life
and after her decease she to give the same to
whom she pleases, passes but an estate for
life with a power; yet if an express estate
for life had not been devised & the wife an es-
tate in fee would have passed by the other words.
8 Vin Abr. Devise W. a. pl 234. Where,
indeed, such an inconsistent life estate is
given, the fee does not pass, for this whole
matter rests upon intention. The estate
being the testator's to give, his will, is the
law of the subject, unless that will be
against the law of the land. Where there
for there is an absolute power of disposi-
tion without any other bequest is the party-
except what these words themselves imply,
they & operate to convey property & not
power only. And where an interest is
given, generally, and without limitation,
that gift is not converted into a mere power
by annexing thereto a general power of dis-
position. As a devise to A with power to
dispose at pleasure, is considered as conveying
-ing property, not as conferring power; for
the words of power will not be permitted to

take away what without there is expressly
given. But when there is an express and
inconsistent estate for life given the con-
struction of the instrument is altogether different.
For the express estate for life negatives the
intention to give the absolute property and
converts their words into words of mere pow-
er, which, standing alone would have been
construed to convey an interest. This ap-
pears to me to be very clearly established by
the cases that were cited at the bar; which
further lay down that where an interest
and not a mere power is confer^{ed}~~red~~, the
absolute property is vested without any act-
on the part of the legatee, but when a power
only is given, that power must be executed
or it will fail.

The whole law is, here, excellently, and well
stated by Judge Tucker and all the cases
before, & since, turned upon the question,
whether or not, by the language employed, an
absolute and unqualified power of dispo-
sition was conferred. If it was, an absolute
power, an unqualified interest was conferred in
the donee, or devisee.

So, in the Case of

May v. Jynnes 20 Grant p

Conway Robinson (where argument of

was endorsed by the decision of the Court)
after a review of the Cases Says

"Thus the principle was established that
where there is in the first-taker a power
to spend or dispose of the whole subject, and
the limitation over is of no more than he
shall have left-unsold and undisposed
of the first-taker is thereby vested with the
absolute property and the limitation
over is void." "Whenever it is the clear
intention of the testator that the devisee shall
have the absolute property in the estate de-
vised, a limitation over must be void,
because it is inconsistent with the abso-
lute property ~~so~~ supposed in the first-
devisee. And a right in the first-devisee
to dispose of the estate devised at his pleas-
ure (as distinguished from a mere power
of specifying who may take) amounts to
an unqualified gift." 32 page 689

"The Virginia Cases distinctly recognize
the rule that after an absolute property
given to one, with an unlimited power
to dispose of it, express or implied, a dis-
position by the owner of so much prop-
erty as may not be disposed of by the donee
or by will, to another is void, because of the
inconsistency and uncertainty as to what
part of the property is ~~given~~ intended to

for over " and he refers to

Riddick v. Cochran & Rand 547

Madden v. Maddens Exors 2 Lysk 377

Banner v. Anderson 3 Dc 348.

Shermer v. Shermer 1 Wash 266

to which may be added

Dunkan's Exr v. Woodcock Exor 10 Lk 628

Barksdale v. White 28 Grap 224

Meth. Soc. M. E. Church v. Calverts
adm 32 Grap 357.

Reynolds v. Lee Va Law Journal Oc-
tober 1881. p 649

2 Minors Institute 2 971.

Now let us see what are some of the facts
of these cases.

In Riddick v. Cochran, will of
his will gave specific legacies to his ³daughters
Christian, Esther & Mary Cole & to his
daughter Betty he gave his plantation and
lands of all kinds and two slaves males
and females and increase of the females & her
other heirs and assigns forever. He directed
all the residue of his property to be sold and
paid ^{after the debts were paid} for it to his daughter Betty her heirs & as-
signs. He devised that this money should re-
main in the hands of his executors until
his daughter was of age and added "It is my

will and desire that of my aforesaid daughter Betty, shall in without-contrivance her or issue of her own body that then all the lands, and all the other estate I have here in given to my said daughter Betty, that shall be left-remaining at her death be equally divided to and between my three sisters aforesaid, namely Catherine Cole Mary Cole & Esther Cole to them & their assigns forever. Betty also did without-contrivance the slaves bequeathed to her & the increase were divided amongst the sisters of the testator.

Afterwards on the question going over up "Whether the limitation over to the testator's three sisters was good as an executory devise?"

The court held, p 549, that the property "was given to the daughter absolutely and in the strongest-terms and to the sisters & their heirs and assigns of the daughter should die without-contrivance issue her or issue of her own body" and at p 550 says "It is clear here limited to give to his daughter an absolute power of alienation, and in that case, could not control the property not disposed of by her, as such control would be inconsistent with the nature of the estate given to her and the limitation over void, for uncertainty as to

what property was to go over". And after
quoting Guy v. Montague & other cases says
at p 551 "Then are other cases to show
that after an absolute property given to one
with an unlimited power to dispose of it,
express or implied, & a disposition by the donee
of so much of the property as may not be
disposed of by the donee or legatee to another
is void, because of the inconsistency
and the uncertainty as to what part of the
property is to go over, over."

In Madden v Madden 20 Lough 377 (Q),
the testator bequeathed "the moveable prop-
erty of every description after the death of my
wife shall be sold & the proceeds thereof
equally divided among my five daughters
Nancy, Susan, Mary, Jane, & Elizabeth;
and that
After all my just debts are paid my desire
is, ~~that~~ ^{his} of my moveable property shall
be at the entire disposal of my wife Jane
Madden: on her decease, the same to be
disposed of as above mentioned".

After a strong dissenting opinion from
Green who held that because the prop-
erty was to be at the entire disposal of
the wife, Jane Madden, that therefore
the fee was in her, the other judges held
she only had a life estate because

The will showed that the ^{movable} property of every
 description was to be sold after the death of
 his ~~wife~~ wife, that it was then to be
 divided among them, and ^{added again} that on her decease
 it was to be disposed of as above mentioned.
 They held that though the language was
 "entire disposal" yet that this did not carry
 with it such an absolute dominion over
 it as to vest the whole property in her be-
 cause it was apparent that ~~the~~ the dispo-
 sal of it that was contemplated was the dis-
 posal for life. That she might govern, use
 & control it for life, but at her death it was
 to go to his five daughters

& Can Judge at p 412 says "There are
 no technical words or forms of expressions
 used in the will. It is evidently, the product
 of a plain man, who, though he under-
 stood very well what he meant to say, and
 was able to express himself quite ^{clearly} intelligently,
 knew nothing of legal forms, or legal phrases
 To ascertain his meaning we must not
 look to treatises on wills, or to adjudged cases
 but simply to the word he has used. —
 He then quotes the sentence of the will and
 says it is impossible to misunderstand it,
 or to have doubts about it: it expresses the clear
 will of the testator on two points: (1) that all of the
 personal estate was to be sold for ^{the benefit of} his daughters

and 2) that this sale was to take place after
the death of his wife; and commenting on
the word "until disposal" he says "they are
not technical words to which a fixed mean-
ing is attached, and that everyone knows that
we must suppose the testator so used them
they are such words as may well be ex-
plained, and their operation either enlar-
ged, or restricted, by the context. Thus, the
direction being given to sell the property
at the wife's death, the entire disposition
from her, means the full use and enjoy-
ment, the unlimited possession and
ownership and disposal as may leave
the property to be sold at her death" &c

The other judges (except Green) con-
cur in these views, the Court held
Mrs Madden had only a life estate.

In *Burmes Exr v. Anderson*
10 W & 3 L 376

William Paston by will in 1291
devised and bequeathed as follows: "I desire
that my wife Elizabeth Paston may have
and possess during her life all the real &
personal of my estate whether real or perso-
nal. And after her death, my will and desire
is that all my estate both real and personal shall
be turned into money by the most advantage

sums sale which my executors can make
of it, and the amount thereof distributed
in the manner following. viz, I bequeath
my wife & her will or otherwise as she
pleases may have the absolute disposal of
£500 thereof. I give my Nephew William
Pastor, & he paid him when he attains the
age of twenty one the sum of £200 sterling & the
part thereof. And it is my will and desire
after deducting the two last-mentioned sums
that two thirds of the residue be paid to my
niece Anne Smith for her own use, and
the remaining third to my friend Nathaniel
Bunce for the use & benefit of my sister
Ann Craig & be always at her dispo-
sal in such a manner that her hus-
band Thomas Craig and his creditors
may have no power over it. I give to my
wife the absolute ^{property} ~~power~~ in my chariot.

It is my will and desire that of the estate
hereby before directed to be used for the pay-
ment of my debts should not prove
sufficient for that purpose whatever
sum my other estate shall be called
on to ~~pay~~ make up shall be deduced in
equal proportions according to the sums
demanded in money to my wife, to my neph-
ew, to my niece and to my sister as
aforesaid.

The testatrix's widow

Mrs Paston died in 1792 intestate,
without having disposed of in her life
time of the £500, and the question was
Whether the bequest of the £500 was
a legacy and gift of that sum to Mrs
Paston, or only gave her a power of
appointment of so much, & that pow-
er having been no wise exercised by
her, the money fell into the residu-
um of the estate for the benefit of
the other legatees?

It is upon this case that Judge
Foster uses the language we have
heretofore quoted stating the ^{generally} law, as
plainly and as perspicuously as it
is possible to state it.

On the question that has just been
propounded - whether the bequest of the
£500 to Mrs Paston was a legacy, or a
mere power which by ~~failure~~ her
failure to appoint - fell into the residu-
um of the estate he said "looking at
this case upon those principles I can not
doubt that this will conveyed not a mere
power, but an interest also. So that as
to the £500 pounds it is a sum to be at the
absolute disposal of the wife by will, or otherwise

as she pleased without any other disposition
 to her by name than what is implied in those
 words: there is no life estate in the £500
 to control their operation: and, therefore, they
 have the established effect - of passing an abso-
 -lute right."

In *Shermer v. Shermer* 1 Wash 266

John Shermer by his will de-
 vised to his wife the use and profits of his
 whole estate, both real and personal, du-
 ring her natural life, and after her decease
 -ed, then the whole of his estate, exclusive
 of that already given to his wife, to be e-
 -qually divided between ~~whom~~^{whomever} his wife
 should think proper to make her heir, or
 heirs, and his brother Richard Shermer.

This was held to give Mrs
 Shermer an absolute interest - in the half
 of the estate that was ^{to be} divided between her
 and the ^{testator's} brother Richard, because as
 she had the use & profits of the whole es-
 -tate for life, the whole estate was at her
 death to be divided the one half going to
 her the brother Richard & the other half
 to any person that she might choose to
 give it to and the court held that "by Suf-
 -fering it to go to her legal representatives
 to succeed her she actually made them her
heir or heirs as much as if she had pointed

them out-by an express devise" p 272

In May v. Jynes 20 Gratt p 692
Judge May by his will said "I give
to my beloved and excellent wife, Subject-
to the provisions hereinafter declared, my
whole estate, real & personal, and especially
all real estate which I may hereafter acquire,
to her during her life, but with full power
to make sale of any part of the said estate,
and to convey absolute titles to the purchasers;
and use the purchase money for an residence
or any purpose that she pleases; with only
this restriction, that whatever remains at
her death shall, after paying any debts she
may owe, or any legacies that she may leave,
be divided as follows". He then gave one
moiety to trustees for the use of Evelyn & her
children & another moiety to trustees for the
use of Margaret & her children.

A bill was brought to construe this will,
contending that Mrs May had only a life
estate in the property, but she claimed
the fee, saying (in the argument of Conway
Robinson that was endorsed & confirmed by
the Dean of the Court-) "It is true that the
testator, in the second clause of his will be-
-gins by giving to his wife, subject to the pro-
visions therein^{after} declared, his whole real es-

late during her life, and if the clause had stopped there, the court might well have pronounced the opinion that she is entitled to the same, except the part embraced in the codicil, for life only. But the clause extends farther. Not only does it ^{give} her full power to make sale of any part of the ^{said} estate and to convey the absolute title to the purchaser, and use the purchase money for investment, but it authorizes her to use it for "any purpose that she pleases, with only the restriction, that whatever remains at her death shall, after paying any debts that she may owe, or any legacies that she may leave, be divided as follows."

These words show a clear intent in the testator to give to his widow an absolute control over his whole estate, & vest in her absolute property. He said further "as Mrs. Mary is clothed with full power to make sale of any part of the estate, and to convey absolute title to the purchaser, she must consequently, and by necessary construction, have herself the full simple or absolute property to enable her to pass the absolute title." She ~~was~~ might not have the absolute property if she were only authorized to use the proceeds for investment but when we find that she may use the proceeds for any purpose whatever that she pleases

it follows, that however absolute was the title to the property, his right to the proceeds is no life est. "When such an unrestrained power has been given to the widow, and an absolute interest-vested in her, there can be no valid limitation over to other persons. If the testator imagined, that after giving to the ~~the~~ widow such absolute power of disposition he might by law make further limitations, he was mistaken as was the testator in *Grey v. Montague* 3 Bro; P. C. 316.

But in truth he did not mean to create a limitation valid against her. He "meant his fortune to pass through the pleasure of his wife, leaving it to her to use what she pleased, and consequently to make the residue what she chose". And after reviewing the Cases he says as before quoted "Thus the principle was established, that when there is in the first-taker a power to spend, or dispose of the whole subject - and the limitation over is of no more than she shall have left unspent, or undisposed of, the first-taker is thereby vested with the absolute property & the limitation over is void."

N. B.

Does this law apply to the case before us -

This Samuel Turner case - the case at-Bar.

Is there any absolute ~~power~~ and unqual
fied power in Margaret Turner to dis-
pose of the estate of Samuel Turner. Is
there any such power in Tempy Turner
Can Margaret-Turner dispose of the
whole subject. Can Tempy Turner
dispose of the whole subject. Can Mar-
-garet Turner spend the whole subject.
Can Tempy Turner do so? Can Marga-
-ret-Turner sell or dispose of the whole
subject-in Tempy Turners life time. Can
Tempy Turner sell or dispose of the whole
subject-in Margaret Turners life time?

Can Tempy Turner do so at any time
even if she should survive Margaret-
Turner. If so, whence is the power, the au-
thority. Whence does she derive it. Can
Margaret-Turner sell or dispose of the whole
subject in Tempy Turners life time?
Has she the absolute and unbridled
control of the whole subject. She can
not sell unless she survives Tempy
Turner. She can not dispose of the
or even the property incumbered by
the use unless she survives Tempy
Turner It is only after Tempy Turners
death, & Tempy Turners death in her, Mar-

garet's life time, is to go to and be held
by Margaret-in fee simple. Prior to
that time they are to have & to hold the entire
estate together and to use it for their joint-
benefit: After can sue & convey the fee
for they are not to have & to use the estate
together and the survivor is to have & to hold
what-may remain but-what may re-
main is to go to Margaret- upon Temp's
death prior to her own. But- if she should
die before Tempy then the joint-
estate ceases & Samuel Turner has not
said what-shall become of it: His lips
are silent, his words are unaid, his
will is unexpressed & he is intestate. Only
the mouth of the law is open & it almost ex-
presses its will of the succession.

Such was the declared law of
May v. Jynnes.

Let us see if it has been changed since
the case of Nelson v. Doe 4 th 439

marginal page 408

and Dunbar v. Woodcock 10 th 628

might have been referred to, but I believe
were not.

In Mason v. Doe John Cooper, the
counselor derived as follows "I give to my

son William bought the plantation place
in to him & to his heirs forever. In case he
should die without a son & not see the land
I give the land to my son George; & if he should
die under age then the land to be sold by Geo
Herbert - and divide the money among all my
children then alive &c

William married, did not have a son, & died
leaving a daughter & without heirs, sold the land.

It was held that there was an
unlimited right given to William the first -
like to sell the land, & the devise to him & to
his heirs even though he should die without
a son created an estate tail which was con-
verted into a fee simple & barred the Con-
tinuous - remainder in George; that there was
a manifest intent to give William an un-
limited and absolute right to sell the land,
when, how, and to whom he pleased; he might
have sold the fee simple, & therefore he
took the fee simply by devise, & though he did
not see he died seised of the fee."

Is there any unlimited and abso-
- lute right of sale in Margaret - or in Jeremy.
If they had both united in a deed to the purchaser
- she would he have gotten the fee. Could they
or either of them sell, when, how & as they
pleased. Could Jeremy sell in the life time of
Margaret. Could Margaret sell in the life

line of Dempsey. Could Margaret have conveyed the fee in the life time of Dempsey. Was she any thing more than a joint-tenant-for life with a remainder in fee of the survived Dempsey. If so what is that but a ^{joint-}life estate contingent with a remainder contingent upon survival.

In *Dunbar Exors v. Woodcock & Co*
10 Eng. R. 628

Woodcock devised "I leave the use of all of the real, residue & remainder of my estate, real personal & mixed to my beloved wife, Francis Woodcock during her natural life and after her death. I give and bequeath the same of every description, as well the land I bought of John Kerr as all the other property remaining at her death to my friend Robert Dunbar & Annanah his wife & their joint heirs forever".

This is a very interesting case from the great variety of personal property involved, money in hand, crops growing, & ^{other} in their way to market, large quantity of household property, stock, agricultural implements &c some of which was consumed, but a great deal of which was unconsumed in the use.

And while there was much discussion of other

7

power there was but little in that must
claiming an attention. The Court declar-
ed that in this case Mrs Woodcock had
only a life estate p 653, and she had
only a life estate "because the subject
having been first bequeathed to the use of
his wife for life in express terms of all proper-
ty remaining at her death, referred to the
life estate previously given to her of and then
what should remain after her use thereof
for life, not what should remain undisposed
of by her. "In all cases cited ^{for} the appellee"
where the life estate was converted into the
fee)" the property was given to the first-
latter indefinitely or expressly in fee with
an absolute power of disposition expressed
or plainly implied, & then only what should
remain undisposed of by the first-latter was
handed over to the remainderman. Here,
an interest for life only (in express terms) was
given to the wife, and there were no words
from which an absolute power of disposi-
tion could be implied for her, without the
utmost violence of construction.

This case shows that the Courts
will not convert a life estate into a fee
unless there is an absolute power of disposi-
tion either expressed or plainly implied
for her not only is the use of the whole estate

Given to the wife, but it is may the proper
by remaining at her death that is be-
queathed to another. This seems to
me to sail very close to those cases
which convert the life estate into the fee
but I show that ^{while} the sailing is near
yet the comet will not so hoist when
it is possible to avoid it.

Now the next case of

Barst's case v. White 28th Gr. p. 224
shows the same, for the "Testator by five
separate clauses of his will gives to his five
daughters by name five slaves, and certain
other personal property and \$1500 in money
to her and her heirs forever. By the 9th clause
of his will he gives all the balance of his es-
-tate both real & personal to be equally divi-
ded among his children;" but showed either
or any of his daughters die without an heir of
their own body, it is his will that all of the
property bequeathed or given them be equally
divided among his grandchildren"

It was held that the daughters each took
the property and money given to them in
the first seven clauses absolutely; & that
their right thereto was not cut down or
restricted by the concluding provisions of the
ninth clause, and that where property

was clearly given absolutely by one clause
of a will that the right thereof would not
be limited or restricted by a separate
clause unless the language of the second
clause was as clear and as explicit
as the terms embraced in the first clause.

In *The Missionary Society of the*
M. E. Church v. Calvert's adm^r &c
Calvert by his will "gave to his wife
Theresa during her natural life a widow
hood all of his estate, real & personal, ex-
cept as was hereinafter excepted, and pro-
vided that if she should marry again
then she was to have the same portion of
his estate as if he had died intestate.
He then directs his executors to sell the
~~Home place~~ his lands & personal prop-
erty and then says that the Home place is
for his ~~wife~~ wife to live in as long as she
may remain his widow, and then it is to be
sold. He then says: I wish the proceeds of
the sale of my real & personal estate, and the
debts due me after paying my debts, to be
put at interest by my executor, & my wife
to receive the interest. But so long as she re-
mains my widow, she is at liberty to receive
from my executors, or from my estate such
part of it as she may choose and to appropriate
it as she believes to be just and right.

And then he directs that all such part of his estate as she does not thus appropriate - all and all of the rest of his estate shall be given and paid over to the Missionary Society of the M. E. Church.

It was held that as the wife was to be at liberty to receive from the Executors such part of it as she might choose and to appropriate it as she believed to be right and just - that all of the estate directed to be sold and invested by the executors passed absolutely to the wife.

The Court said that the testator "manifestly intended that she should hold a portion of the property in specie, namely, the tract of land which he called the home place and each of the personal property, except merchandise as she might wish to keep."

The residue of the property real or personal, he directs to be sold, and the proceeds of the sales and of the debts owing to him to be invested by his executors, & his wife to receive the interest. If there had been no other direction, it is plain that the estate intended for the wife was, as expressed in the clause of the will alluded to, an estate "during her natural life or widowhood" But just here comes in the provision which

I think *quasi* and enlarges the estate already given, at least to the extent of the fund directed to be invested. After directing the sales to be made, the language is, I wish the proceeds of the sale of my real & personal estate and the debts due me, after paying my debts, to be put at interest by my executors and my wife to receive the interest; but so long as she remains my widow, she is to be at liberty to receive from my executors, or from my estate such part of it as she may choose and is appropriate it as she believes to be just & right." Now, here is a right not only to the interest on this fund, but to the fund itself. It is not a mere naked power to appoint, or to dispose of, but a right to receive such part of the fund "as she may choose" and in the words appropriate it "as she believes to be just and right". This language imports absolute dominion, and absolute dominion is one of the best descriptions of absolute property. And the decree of the court was in accordance with the opinion pronounced.

In the case of *Reynolds v. Lee* decided at Westhill July 1881 & reported in the October Number of the Virginia Law

Journal John Frank by his will,
"willed and bequeathed unto ~~my~~ ^{his} beloved wife
Polly Frank during her natural life or
widowhood all of my estate both real & per-
sonal to hold and dispose of as her discretion.
She is to dispose of the same equally unto my
children as she has to share, each on his
account - for what he receives except
my daughter Nancy and it is my wish
that she receive, after the death of my wife
the sum of one hundred dollars in money
exclusive of her proportionable share of the
estate. I also want my daughter Susan
- not to hold what she has received her
life & to account for it."

Now the Court said that "We are
of the opinion that this clause of the will
gives to the widow only an estate for life
in all of the estate of her husband, both
real & personal, which is subject, how-
-ever, to his debts by the first clause, remain-
der to his children equally, with a power
to the widow to make equal advances to
them except to his daughter Nancy &c
Then it added "Notwithstanding the be-
quest is to the widow in express terms during
her natural life, yet, if by other clauses
of the will she had been permitted to

use and dispose of the subject-absolute
lively at her pleasure, or of so much
as may remain undisposed of at her
death had been given over at her death
(which implies a power of unqualified
disposition) the devise ~~was~~ would be
constituted by a necessary implication
of the testator's intention to take a full
simple..... But the rule in the case un-
der judgment does not invest the widow
with the power to dispose of the property as
she pleases, but only to dispose of such
of it as she may spare to his chil-
dren equally who are to account for
what they receive as a part of received
in advance of what they would be enti-
tled to in remainder after the determi-
nation of the life estate".

This case, like the case of Dunbar
v. Woodcock 10 Lk 628 shows that
the Court will not convert the life estate
into a fee unless the absolute dominion
is expressed, or is necessarily implied, for
in this case the whole of the Estate of Thomas
-the testator was given to his wife "for life
or widowhood" and she had and dispose of at ^{her} dis-
cretion and she is to dispose of the same
equally with his children" as she has
to spare". But still the court confirmed her

to the life estate.

Then are the adjudicated cases in the state and are conclusive of the question and we need refer to nothing further.

But the last book back the same again, although a devise expressly for life of devise, yet of the devise by the other clauses of the will, permitted to use and to dispose of the subject absolutely at his pleasure or of so much as may remain undisposed of by him at his death (which implies a power of augmented disposition) be given over at his decease, the devise is construed by a necessary implication of the donor's intention to take a fee simple.

2 ~~24~~ Minors Inst p 969-70.

2 Red field on Wills p 394 & 23

In *Shermer v. Shermer*, Pendleton President said "that in disputes upon wills cases seldom elucidate the subject which depending on the intention of the testator, to be collected from the will, and from the relative situation of the parties ought to be decided upon the state and circumstances of each case"

1 Wash 271.

And in *Woolton v. Reed* 12 Gratt. 196
The Court lays down the best-general
rules for the interpretation of wills
to be found in any case.

Turner

v.

Turner et al

Note of
Plaintiffs
Counsel

In the County Court of Isle of Wight County
March 6th, 1882.

On the motion of Samuel Turner jr. and
Elisha Carr, it is ordered that the estate of
Samuel Turner Sr. be committed to the hands
of L. B. Edwards, Shff. of this County for
administration de bonis non, with the
will annexed.

A copy

Test.

L. B. Edwards Shff.

W. A. Youngman.

Samuel. Turner Dr.
Est. Committed
to Shffs-hand

March 6th 1882

Account Sales of the
chattel property sold
January 17th 1882. belonging
to the estate of Margaret
Spivey dec'd:

Grind Stone No. 1.	J. W. Johnson	60
Dr Dr " 2.	J. S. Isary	85
One Large Pot	Edolphus Rhodes	15
Brass stove cap, tub & worm	Elisha Carr	16 50
2 furnace stands & tubs	Charles Gresham	65
one stov yoke & pin	James E. Turner	20
" Set cast gear	A. A. Redd	75
10 gals vinegar 19 ^{cts}	J. M. Vaughan	1 90
one fire place	J. S. Isary	10
one Dr.	John Turner	05
Two furnaces & manure	W. J. Saunders	05
one strainer & contents	J. S. Isary	02
" Hammer	Dr	11
" Riding saddle	Dr	95
" Pitch fork	Henderson Hoggard	10
126. timber, stove & bar hives	Dr.	01
one lot shingles	A. A. Redd	1 15
" piece of iron	Dr.	05
" cart wheels	J. A. Munford	2 50
" Rail Cast	J. P. Rhodes	16
Row hide & saw	Dr.	05
Standsaw. No. 1	J. E. Turner	40

1 pr. hames	J. J. Rhodes	12
1 Saw (No. 2)	J. J. Carr	25
1 Hatchet - no. 1.	Spencer Carr	35
1 do No. 2.	J. P. Rhodes	10
2 long-barstanger	W. J. Saunders	57
2 Cooper's adze & auger	J. W. Spirey	59
1 pr. wedges	B. Cunniff	57
1 Corn sheller	John Turner	57
1 box & contents	Chas. Fulgum	25
1 hand-vise	J. M. Turner	45
1 bushel peas & barrel	S. J. Clements	75
1 bl. & peas in hull	G. J. Marshall	50
1 basket & peas	J. E. Spirey	05
4 baskets	W. E. Langford	90
1 X cut saw	J. A. Minford	1 20
2 Cooper's adze	J. W. Spirey	15
1 iron wedge	John Turner	15
1 box & contents	Mo. Ballard	08

\$32 85

1 Maul	J. W. Vangham	10
9 cider barrels @ .20	J. J. Carr	1 80
1 lot Corn shucks	J. J. Clements	70
1 gourd	J. J. Rhodes	10
1 Spade	J. W. Spirey	46
1 pitch fork	S. A. Barrett	58
1 weed-hoe & shovel	A. A. Read	25
2 shovels	J. A. Babb	08
1 fork-hoe & weed-hoe	Do	08

2 axes	A. J. Pierce	05
Saws & pig	W. C. Spirey	03
Cider-press	W. A. Spirey	50
3 flitches	do	05
1 set old plows &c	J. J. Rhodes	12 1/2
1 Atlas plow & casting	W. H. Turner	50
1 mit-mill	W. C. Spirey	2 25
1 Keg	W. A. Spirey	50
3 bato-gourds & ^{trip} swinglet	John Turner	07
1 Ape	J. H. Spirey	10
1 tub - No. 1 -	John Coggin	60
1 do - No. 2 -	Jack Butler	50
1 do - No. 3 -	John Coggin	20
8 empty bbls. & hog's head	J. M. Cones	12
5 quince gourds	J. E. Turner	12
1 set. Choice hogs - No. 1 pen	W. H. Spirey	8 05
2 shotes @ 2.80 each	do	5 60
3 do @ 2.05 "	Tom Spirey	6 15
1 hog - 1 set. Choice - pen No. 2	W. H. Spirey	6 00
1 do 2. choice	Tom Spirey	3 25
3 do 3. choice	J. C. Johnson	3 90
2 do 4. " 12 each	Tom Spirey	2 24
1 whitish Cow	M. H. Carr	8 00
1 middle heifer	do	7 25
1 bull	do	8 50
3 Chambers	J. A. Johnson	25
1 side leather	Elisha Carr	20
1 set do	J. A. Spirey	05

1 side in rough	J. E. Sperry	25
1 piece leather curria	J. S. Gay	60
1 " do "	V. E. White	70
2 pins	J. E. Avis	54
1 moulding plane	E. Carr	16
~~1 lot planes no. 4~~		~~15~~
1 lot planes no. 1.	J. E. Rhoads	25
1 " do " 2	E. E. Johnson	30
2 tongue & groove do	J. E. Rhoads	31
1 pr. pinches & nippers	J. S. Person	30
hammer, chisel, gauge & bit	J. A. Johnson	40
bucket & contents	John Coggin	50
1 looking-glass	N. K. Sperry	30
5 flag. bottom chairs @ .60	N. A. Butts	3 00
3 washers do @ .47	N. R. Darden	1 41
1 clock	R. N. Turner	15
1 chest	N. A. Sperry	75
1/2 doz. goblets each .07	Chas. Fulgum	42
3 preserve-cans each .11	R. N. Turner	33
vinegar & pepper staves	J. E. Turner	10
1 pitcher	E. L. Johnson	15
3 glass tumblers @ .05	Nathan Turner	15
1 lot bottles	R. N. Turner	02
1 razor & hone	J. E. Johnson	30
1 small camp dish and		
5 cup-plates	Chas. Fulgum	59
1 bush 1 lot gourds	E. L. Johnson	13
1 bush	Wencer Can.	2 95

Seed-cotton

1 feather-bed

2 do

1 do

1 fat-stand

1 gum-table & trivet

1 tray

1 pine-box

3 chaise-boxes

1 basket

4 bed-posts

1 lot Coras

1 single bee-gum

1 double do

1 Cupboard

1 tin safe

1 lamp & bottles

1

1 wash-basin, 2 buckets & pail

1 No. 1 spinning-wheel

2 do

2 bread-trays

1 barrel & peas

6 flour bbls. & contents

1 horse-collar

1 flour bbl. & old iron

1 lot hook-lines

1 gourd & contents & 2 sifters

no. 1

No. 2 & 4

No. 3

J. A. Barlett

Jesse Johnson

W. A. Spirey

Chas. Sulgum

G. W. Turner

Sam Butler

John Coggin

Tom Spirey

W. A. Spirey

J. J. Clements

Sam Butler

do

N. H. Spirey

R. N. Turner

Henderson Ballard

J. P. Rhodes

W. W. Heines

Joseph Spirey

A. J. Pierce

W. J. White

John Coggin

Edmund Babb

J. E. Spirey

John Turner

M. E. Rafter

J. J. Rhodes

J. E. Spirey

21

35 00

32 00

15 00

50

40

56

64

15

45

36

56

2 50

10 60

1 05

2 30

15

\$113 61

10

2 38

1 85

80

40

1 10

56

40

56

10

1 cake baker & pan
 1 weed-hoe
 1 set plow-gear
 1 table-cloth - Col'd
 1 ac. white - 2 jugs & mortar
 1 hair
 1 mouse-trap
 1 blk. cotton
 1 oil-can
 1 bag sword
 1 frying-pan
 fish-tackle
 2 skin-knives
 1 knife table & 1 lot plates
 Cups & saucers
 1 deck & 1 large pot & lot hooks
 jar - No. 1
 do " 2
 1 bowl & pitcher
 1 small bowl & 1 white bowl
 Coffee-pot & sugar-dish
 2 blue-eyed dish & 3 plates
 knives & forks
 1 C. p. tin
 1 plate
 1 grind-stone
 1 spider

Sam Ballard	05
J. E. Turner	19
A. A. Reed	1 20
E. L. Johnson	21
J. P. Rhodes	57
J. M. Vaughan	10
Adolphus Rhodes	07
S. A. Barnett	52
E. L. Johnson	20
J. A. Munford	20
Joseph Spincy	46
J. E. Carr	16
Jas. Powell	10
Adolphus Rhodes	95
do	20
J. C. Johnson	2 85
J. E. Turner	31
Henderson Ballard	50
John Coggin	10
A. J. Peice	22
J. M. Cones	10
Sam Butler	35
R. G. Butler	71
John Turner	36
John Vaughan	60
He. Ballard	56
W. H. Jenkins	42
	18 95

1 Oven
 2 small pots—
 1 Coffee-kettle
 2 Chairs & 1 small table
 2 slop-pails
 1 Skillet
 Shovel & tongs
 Collar & fat. gourd
 One water-pail
 One miggins
 1 Spike & shoulder axe
 Cheese-box & contents
 1 pr. andirons
 2 gourds & contents
 fodder @ 1.15 pr. hundred
 warping-bars
 1 whip-saw
 1 Pick
 2 books
 1 lot books
 1 scroll-saw
 1 ~~box~~

Adolphus Rhodes	50
N. H. Sperry	1 25
Hermanus Ballard	26
N. H. Sperry	44
J. M. Cones	11
Engine Bradshaw	35
E. L. Johnson	40
H. Ballard	28
A. J. Perce	15
W. M. Stephenson	10
R. N. Turner	52
Lewis Branch	54
A. A. Read	10
J. E. Rhodes	56
V. E. White	46
N. H. Sperry	55
M. L. Rafter	10
Elisha Carr	50
Sam Turner	10
R. N. Turner	55
J. H. Johnson	61

5th page — \$ 5 30

4th " 18 95

3rd " 113 61

2nd " 72 15

1st " 32 85

Total sales \$ 242 86

Recd of Margaret Sperry Cash due 31. Dec. 1882. 119 00
 Total sales and recd \$ 361 86
 W. A. Sperry admsr.

An Inventory and appraisement of the estate of Margaret Spivey decd. in the County of Isabella made by the undersigned appraisers appointed by the Court of said County - said appraisers having first been sworn according to law this 16th Jan. 1882.

No 1

" 2

One Ironed Stone		50
" " Dr.		50
Draws Grate or rake		05
1 Longe fork		25
Still tub worn	25	00
2 pumpkins stands + tub	1	00
1 shut yoke + skin		25
1 set cast gear		50
Vinegar for gal. 10 ^c		
3 planes + one hammer		50
One strainer + contents		10
2 funnels + measure		10
2 pitch forks		75
13 arched timbers, stove + bushing		10
One lot shingles	1	00
" Cast + wheels	3	00
One nail Cast		10
		<u>\$ 33 70</u>

unt. brot over	83	70
1 Bot Pumping	2	00
2 stand saws		50
one saw blade		25
onebbe - clean pear		75
" " of pear in hull		50
3 Iron wedges		50
one Basket h. pear + good		10
4 upright baskets		50
one + cut saw	1	00
9 Cider Barrels	2	00
Lot corn shucks		75
3 Drawing knives + 2 dd 37"		25
Woodsman's shovels	1	00
1 Cider press	2	00
1 riding saddle		25
3 <u>pitchers</u>		25
2 plows 11 + 60 - section		110
one atlas plow for digger	1	00
" nut mill	1	00
" Hog		25
3 axes		25
3 Saws	1	00
8 bbls. + 1 sthd. S.	1	00
5 green goods		10
7 hogs	15	00
5 Hogs	46	00
2 Cows	12	00
1 Bull	6	00
	<u>\$1100.00</u>	

	ant brot down	100	00
	3 Chambers		28
	1 Basket. plains, fine & R	2	00
	1st Leather	2	00
	one Smoking glass		25
	5 flag bottom Chairs	1	50
	3 Windsor Chairs	1	00
	one clock		25
	" Chest		50
	1/2 doz. goblets		50
	3 preserve cases		40
	Vinegar Cruet & pepper bot		10
	one pitcher & bowl		25
	5 Cup plates		10
	3 glass tumblers		10
	2 bottles		05
	1 Beef at	3	00
	Bag Cotton		10
	one Single bbl. gun	2	50
	" Double " 50	10	00
	Safe & contents	1	50
	one cupboard		50
	Sampl & bottles		25
	one razor		25
No. 1.	Deather Bed & furniture	25	00
" 2	50	25	00
" 3	50	20	00
	one gun table		25

one tray	25
one bbl peas in hull	25
fine wings Shure + Inus	10
2 Ash pale stone muggin	10
one bow + cane pan	25
one lot beade fadder	50
wasping bars	10

one pine box	199	15
3 cheese boxes + 1 basket		25
1 tin stand		25
4 1/2 d post		75
one 1/2 d head		50
1 Bond v. St. L. Spivney	2	50
1 Pine table + oil cloth	16	00
wash pan, 2 buckets + basin		75
2 spinning wheels		10
2 Bread trays	2	00
2 wooden dishes		25
one slay		50
2 Jugs - one can milk + c.		25
fishing tackle		50
one Desk		10
2 fans		25
Crockery + tin ware		20
one pine table		50
Cooking utensils		10
one water pail	5	00
		10

Boxed n. Hardy C. Shew for \$50.00 bearing date Aug. 13. 1881. 57 75

Do. n. Sam for \$16.00 bearing date Aug. 27. 1881. 16 44

set skins & furs	50
one dish Blue edge plates	75
" set plow gear	75
3 stove chairs	10
1 cup tin	25
sewer, box & bar reel	10
shearer of lance	10
one flour barrel & trucking	10
5 flour barrels	50.
	301.75
	~~233.50~~

Respectfully
Submitted
J. A. Johnson }
James M. Leves } appra
Jesse ^{his} Johnson }
~~son~~

William A. Spivey
admr

Commons office of Esq
January 30th 1882

This Inventory & appraisement
of the estate of Margaret
Spivey decd, was received
& examined & approved
by me as Commissioner of
accounts of said County
Test U. P. Gunglman

In the Clerk's Office
of Schofield County
Court, the 31st day of
January 1882, This
Inventory & apprais-
ment of Margaret
Spivey's estate was
received & admitted
to record.

Test

W. P. Younger

Attest

W. P. Younger per

W. A. Edwards D.C.

Margaret Spivey's
Inventory & appraisment

at copy

Turner & Carr, clerks

to, 3 In Chancery

Spivey's adm. estate.

Exhibit 9

Filed with bill.

This Indenture made
this 26th day of October
1881, between Margaret
Spivey of the County
of Isle of Wight and
State of Virginia of the
1st part, and M. H. Spivey
of the County of Isle of
Wight and State of Virginia
of the 2^d part - Witnesseth
that the said Margaret
Spivey, doth in consideration
of the sum of one hundred
Dollars to her in hand
paid by the said M. H.
Spivey at or before the
~~making~~ making of these
presents, hath bargained
and sold, and by these
presents doth grant bargain
and sell unto M. H. Spivey
his heirs and assigns
all of my personal estate,
except one bed, one chest and
one spinning wheel, and
I do sell one half of all
of my real estate, it being
the lands &c, willed to me

by the late James Turner
decd: with all its appur-
tenances unto M. C. Spivey
his heirs and assigns
forever free from the claim
or claims of the said
Margret Spivey her
heirs and assigns well
and do warrant, and
will forever defend by
these presents day and
date above given a witness
my hand & seal.

Witness ^{her} Margret ^{mis} Spivey
Miss H. ^{his} Stephenson.
Benj. ^{his} ^{mis} Crumpler.

Deaf Wicket County N.C.
This day personally appeared
before me, in in my County
aforesaid ~~Miss~~ H. Stephe-
nson and Benj. Crumpler
~~two~~ within subscribing
witnesses, and made oath
to the signatures or + marks
made by the said Margret
Spivey whose name is annexed
to this paper.

Given under my hand
this 31st day of Decr. 1881.
T. J. Clements M.D.

In the Clerk's office
of the County Court
of Isle of Wight County
the 4th day of January
1882. This Deed from Margaret
Spivey to U. K. Spivey was
proved by the oaths of Miss
W. Shepherson and Benjamin
Crumpler the subscribing
witnesses hereto & admitted
to record.

Teste.

M. D. Younger.

W copies

Teste

M. D. Younger.

W. A. Edwards D.C.

Spivay Margaret

No. $\frac{3}{7}$ Copies of
Deeds

W. H. Spivay

Turner & Carr chx.

vs. $\frac{3}{7}$ In chx.

Spivay's adm. estab.

Exhibt. C

Filed with bill.

This Deed made this 28th
day of March in the Year
of our Lord 1881. between
Samuel Turner, and
Margaret Turner both
of the County of Shenandoah
and State of Virginia
Witnesseth, that for &
in consideration of
Three Hundred & Sixty
One Dollars, the said
Samuel Turner doth grant
with general warranty
unto the said Margaret
Turner, the following
property to wit: all
right, title and interest
which the said Samuel
Turner enjoys under the
last will and testame-
nt of Samuel Turner
decd. in and to all the
property, given, devised &
bequeathed by said last
will and testament
which said last will
and testament was
proved & ordered to

be recorded in the Clerk's
office of Isle of Wight
County - on the 7th day
of March 1881. And the
said Emily Turner
covenants that she will
make and execute
such other and further
assurances as may
be necessary to convey
to the said Margaret
Turner, all the right
title and interest aforesaid
witness the following
signature and seal
Emily ^{my} Turner 

I, W. J. Stollard a Notary
Public in and for the
County of Isle of Wight
and State of Virginia
do certify that Emily Turner
whose name is signed to
the writing above bearing
date March 30th 1881. per-
sonally appeared before
me in my County and
State aforesaid, and

having the said writing
fully explained to her
she the said Trudy Turner
acknowledged the same
Given under my hand
this 28th of March 1881.
W. J. Holland N.P.

In the Clerk's office
of Ischofright County
Court, the 4th day of April
1881. This Deed from Trudy
Turner to Margaret Turner
was received and admitted
to record upon the annexed
Certificate of W. J. Holland
a Notary Public.

Test.

W. A. Edwards S. C. for
N. P. Younger.

Copies

Test. N. P. Younger
W. A. Edwards S. C.

Turner Oakes

vs. $\frac{3}{4}$ Copy of
Wills

Margaret Turner

Turner Oakes

vs. $\frac{3}{4}$ In ch.

Spencer's adm. estab.

Exhib. B

Filed with bill.

In the name of God Amen
I James Turner, of the
County of Loudoun, State of Virginia being
advanced in years, weak
and feeble in body, but
possessing a sound mind
do make and ordain this
to be my last will and
testament hereby revoking
all others by me at any
time made in manner
and form following:

1st

I desire that all my just
debts be paid.

2^d

I desire that my beloved
wife Margaret Turner, &
my daughter Mary
Turner shall have & have
my entire estate both
personal and real together
and use the same for their
joint benefit, during my
daughter's life, or while
she remains single, should
she marry or die while
my wife lives, at her mar-
riage or death, I desire

what may remain of
my estate to go to and be
used by my wife in her
simple.

3^d

I nominate, constitute
A. St. Ashburn my Executor
In his testimony whereof
I have hereunto set my
hand and affixed my
seal this 8th of Feby. 1876.
In the presence of Samuel ^{his} Turner Seal
J. O. Branch }
G. M. S. Watkins }

In the County Court of
Chesapeake County
March 7th 1881.
The foregoing will of
Samuel Turner was
proved and admitted
to record.

An abstract
Ditto.

W. H. Edwards S. C.
for N. O. Younger

Turner family
will

"a copy"

In the County Court of
Isle of Wight County.

March 7th 1881.

The last will & testament
of James Burner dec'd.
was proved in fact by
the oath of James O. Branch
one of the subscribing
witnesses thereto, And Geo.
M. D. Watkins, the other
subscribing witness thereto
being dead, A. M. Eley
was sworn, and deposed
that he is well acquainted
with the hand writing
of the said Geo. M. D. Watkins
and verily believes his
signature as a witness
to the said will to be
in the proper hand
writing of the said Watkins;
And thereupon the said
will is ordered to be
recorded as the true last
will and testament
of James Burner dec'd.
And on the motion
of Margaret Burner

who made oath, and together with Dr. J. J. Jones and father P. P. Rhodes her sureties, who justified entered into and acknowledged a bond in the penalty of \$1000⁰⁰ with condition according to law, certificate of administration with the will annexed is granted her on the estate of the said James Turner decd. Ordered that said bond be recorded.

~~Attest~~
Teste.

U. P. Young clk
by W. B. Edwards
D. C.

James Turner, Est.
do. adm. out &
= Much Ch. 1881
= Will

James Turner, Est.
vs. J. J. Jones

Shewey's adm. estab.

Exhibit A Will
Filed with bill.

Margaret Spivey. Adm^r

vs

Sam'l. Turner Jr. &c.

Will - its Construction

The confusion of ideas displayed by plaintiff's Counsel in his notes together with the comprehensive, brief, learned and conclusive note of my associate limits my pen to a partial discussion of the points raised in this suit, and embarrasses me in this partial discussion. I shall confine this note to the

Testator's Intention.

And perhaps will notice briefly some points in plaintiff's counsel's note.

Will - 2nd Clause.

" I desire that my beloved wife Margaret
" Turner and my daughter Emily Turner
" shall have and hold my entire estate
" both personal and real together, and
" use the same for their joint benefit
" during my daughter's life or while she
" remains single should she marry or
" die while my wife lives. At her
" marriage or death I desire what may
" remain of my estate to go to and
" be held by my wife in fee simple."

2
Remark 1. - My associate and plaintiff's counsel
differ as to the correct punctuation of
this will and to present it as it is I have
applied to our distinguished and very ac-
curate Clerk, ^{for copy} asking that he pay closest
attention to punctuation. This copy is here
with filed that the Court may see the
punctuation of the record. In trans-
cribing this will I have made such
punctuation as will express most
clearly the will of the testator - giving
full force to every word used.

The authorities agree that no considerable
respect shall be had to the punctuation of a
will but where the will is not punctuated
at all, as is the case of the will before
your honor, it is proper to supply "such
dots, dashes &c-" as will make the in-
strument intelligible and perspicuous;
and hence, my punctuation above does
no violence to any word or sentence
of the instrument and yet brings out
beyond all doubt the intention
of the testator. The first clause down
to the word "together" makes a general
disposition of his entire estate and excludes
all others except the wife and daughter
named - "Expressio unius est exclusio al-
terius". Using the word "together" at its

conclusion to express a joint interest. Having
 made a joint disposition to ^{the} only person
 he desired to share his bounty, the will
 would have ended at the word "together",
 but he desired that the two should
 have different interests in said joint
 estate. He evidently intended that ^{the} daughter
 should be provided for till her marri-
 age or death out of his estate and
 that all ~~rather~~ interest should be
 the property of his wife. And to express
 this difference of interest between wife &
 daughter he continues: "and use the same
 for their joint benefit during my daugh-
 ter's life or while she remains single
 should she marry or die while my wife
 lives." But suppose she (daughter) does
 not "marry or die while my wife lives"
 the next clause or sentence limits and
 defines her interest in his bounty. It is:
 "At her marriage or death I desire
 what may remain of my estate to go and
 be held by my wife in fee simple."
 So in both contingencies, death or marriage
before and after wife death, the daugh-
 ter's interest is fully defined. And
 now, there only remains one expression, ^{very}
 to define the wife's interest in his
 bounty. This definition is clearly set

down in the sentence last above quoted. Let the wife die when she will or long live as she may, her interest includes all his bounty except that share so continuously defined which his daughter takes. When a man by words bearing their ordinary meaning when not technical, and in that case bearing their technical meaning, bequeathes and devises all his estate to certain persons in show so well and truly defined, shall a judicial substitute be drawn so that other persons may come in and share in this peacefully recorded bounty? I refer to formis and Prof. Minors Rules for the Construction of Wills.

Again, There can be no doubt from the unmistakable language of this will that the entire estate is devised to daughter & wife till the death or marriage of Emily, the daughter.

Emily still lives and has never been married. Until her death or marriage I submit that heirs (the heirs at law of the testator) have no interest in the estate and hence no right to litigate before this tribunal.

Mr. Thomas, plaintiff's counsel, in transcribing the will in his note adopts an arbitrary punctuation as near in harmony with his theory of construction as possible. After the word "single" he makes a period where none occurs in the original and begins a new sentence thus attempting to lop off the words "Should she marry or die while my wife lives" from context and place them at the beginning of the following sentence thereby attempting to make a "contingency" or in other words to limit the remainder in the concluding part of this clause of the will to the daughter's dying or marrying while the wife lives. And upon this violence of punctuation he founded the heirs' claim to a part of this bounty. My objection to this punctuation are: 1st it grammatically improper and 2nd upon Mr. Thomas' own reasoning this theory causes the testator to die intestate so that part of the estate which "remains". Will his honor adopt this punctuation in order to let in the "heirs" and by so doing annul a main portion of this will when the punctuation here adopted gives full force to every word in the will.

and gives it the form and air of a paper drawn by a man clear in his expression, although not steeped in the technicalities of the law and perhaps the rules of grammar. Here again I call your Honor's attention to the copy I have filed, believing, as I do, that the reading of this will settle its construction on the principle that the expressed intention of a testator, when not in conflict with, is the law of the land in reference to the bounty devised or bequeathed.

Again, Mr. Thomas assumes the fact, that the daughter was much older than the wife, and upon it undertakes to make his punctuation theory stronger. My own personal knowledge of the parties enables me to say that this is indeed a violent assumption. It may be made a matter of proof.

As much as these documents are already lengthy I shall forbear writing more. If your Honor deems further argument necessary, at your suggestion my associate and myself are ready to pile up authorities on the technical questions involved.

W. S. Sullivan

In the name of God. Amen. I Samuel Turner.
of the County of Isle of Wight and State
of Virginia. being advanced in years.
weak. and feeble in body but possessing
a sound mind do make and ordain
this my last Will & Testament hereby
revoking all others by me at any time
made in manner and form following.

1st I desire that all my just debts be paid.

2nd I desire that my beloved wife. Margant
Turner. and my daughter Emily Turner.
shall have and hold my entire Estate.
both personal and real. together. and use
the same for their joint benefit during
my daughters life. or while she remains.
single, should she marry. or die. while
my wife lives. At her marriage or death.
I desire what may remain of my estate
to go to, and be held by my wife in fee
simple.

3rd I nominate constitute and appoint
A. H. Ashburn. my Executor.

In testimony whereof I have hereunto
set my hand & affixed my seal this
8th day of February 1876.

in the presence of

Jas. B. Branch

B. M. D. Watkins.

Samuel^{his} Turner^{mark} 

In the County Court of Isle of Wight-
County, The 7th day of March 1881. The
last will & testament of Samuel
Turner died: which was presented
for probate at the last term of the
Court, and continued on account
of the absence of the witnesses thereto,
was this day proved by the oath of
James B. Branch one of the subscribing
witnesses thereto, and E. M. D. Watkins
the other subscribing witness thereto
being dead, A. M. Ely was sworn,
and deposed that he is well acquaint-
ed with the hand writing of the said
E. M. D. Watkins and truly believe his
signature as a witness to the said
will to be in the proper hand
writing of the said Watkins, and
thereupon the said will is ordered
to be recorded as the true last will
and testament of Samuel Turner
died. And on the motion of Mar-
garet Turner who made oath and
together with Edwin Jenkins and
Jethro P. Rhodes her sureties, who
justified entered into, and acknowl-
edged a bond in the penalty of
\$1000⁰⁰ with condition according

to law. Certificate of administration
with the will annexed is granted
her on the estate of the said Sam-
uel Turner died:

Teste,

W. A. Edwards D. C.
for N. P. Young. D. C.

a copy. Teste,

N. P. Young Jk

Samuel Turners
Will

See Wright - Co. et.

Spang's adm^r
D. S. $\frac{2}{3}$ notes
Limer & others

For aft -

August 15th 1883.

I received the
notes of the opposing counsel
~~and~~ on Thursday or Friday last-
and being engaged all of those days
and on Saturday, Monday & Tuesday
I could not look at them until
this moment.

As we agreed to put our notes in the
hands of the Court during vacation
and as the Court desires some time
for consideration I will make my
note of reply very brief.

I would remark that the counsel on
the other side seem to have forgotten
that the Bill with all of its exhibits
was filed by our late friend, C. B. Hay-
den and that I have only enforced
the views that he expressed in the Bill.

I quoted from the will. A copy is filed
with the Bill. The Bill quotes the
will and I have only adopted the con-
struction, the punctuation & the writing
as I find & found it - in the Bill. I
thought, & still think it - the natural
& the proper & the very natural &
proper writing & construction of
the will. As I have remarked I

have only ~~just~~ presented Mr Hayden's views as expressed in the Bill, & in his notes as I found them in his papers. As a matter of curiosity and of interest - I file here with his note first - as I found it in its incomplete state because I think it is the last - that he ever wrote, or attempted to write. I concur with him in all the views that he expressed, and I believe that if a plain, unlettered man were to hear the will read he would not dream of a mistake in punctuation or in the use of capitals. It seems to me that plain common sense demands that there should be a rest after the word "single" a period & that the word "shined" begins a new sentence. I think this case illustrates the remark of Judge Pendleton that "cases seldom illuminate a subject" and that plain common sense in the interpretation of wills is a vast deal better than all this vast creation of law.

I adopted the statements of the Bill as to the age of the parties & the value of the estate, & these statements

being founded upon the assertions of
the heirs of Samuel Turner & exhibit
its filed and I presume correct.

The theory of the Bill is the increased
against estate which has terminated
by a contingency not provided for.
The estate was not given to the wife
and Joseph for the life of the wife
& heirs of the wife till the death of
Joseph, but was given for joint-ben-
efit - during the daughter's life or while
she remained single & the wife having
died the joint-estate ceases, & the heirs
of Samuel Turner must come in and
contend & claim the property.

We contend that there is no vested
remainder as is claimed by Messrs
Walker & Prentiss in the First-Position
in their note. We quote only a part
of the language of the will. They say that
the testator says that they "shall have
and hold my entire estate both real &
personal". But they do not say how it
is to be held, nor how used, nor how
long used. The testator says they shall
have and hold it - "together and use
the same for their joint-benefit - du-
ring my daughter's life ~~time~~ or while
she remains single". Here is a doubt -

him of the estate, a limitation of the estate
a description of the use and a limita-
tion of the use. He was carrying out an
estate. Describing an estate & it was
very natural for him to say that
if my daughter should marry or
should die whilst my wife lives
then as per marriage and death I
desire this & so to be done. The
mind naturally rests after the word
single. The mind naturally takes up
a new topic there & there is nothing
in the exact & literal copy of the will
as appended to Mr Holland's note
to raise and out, or any other con-
struction. The will was not written
by Samuel Furmen, nor was it pre-
pared by him. It was written by an-
other for him. The punctuation of coun-
sel will not do any good. There is the
will. It speaks for itself. What did
the old man mean. We think it
very clear. R

All the circumstances relating to
the Death of Joseph Furmen to Mar-
garet Furmen are set forth in the
Bill and not denied in the Answer
20. Position of Defendants Counsel

we do not see how the Rule in
Shellys Case has any thing in the
world to do with the Case at bar.
The Cause & myself are so wide
apart on that subject - that I will
not undertake to discuss it. I
think the whole doctrine is utterly
inapplicable

The Third Point of the Commissions
note is met by the Cases that we
have quoted and an note having
been written for use in Court when
the books might not have been
present the citations are am-
ple, and as we believe con-
vincing. As the Court desired
to consider the matter in vacation
I prefer to place this matter chiefly
in its hands & it may have ample
time (if any time at all is needed
as so plain a case) to consider the
points & to mature its opinion

R. S. Thomas
of Counsel for
Plaintiffs.

Turner

v

Turner

Reply of
Plaintiff's Coun-
-sel to note of
Defendants-

with Brief of
Mr Hayden

Margaret Spivey's Adm^r
ad.

Samuel Turner Jr. &c

Construction of Saml Turner's Will

Will: "I desire that my beloved wife Margaret
"Turner and my daughter Tempy Turner shall
"have and hold my entire estate both personal
"and real together and use the same for their
"joint benefits during my daughter's life or
"while she remains single should she marry
"or die while my wife lives at her marriage
"or death I desire what may remain of my
"estate to go to and be held by my wife
"in fee simple"

Subsequent facts:

1. Tempy Turner the testator's "daughter" conveyed all her right, title and interests in the property devised by the said will, to the said "wife" Margaret Turner, by deed (Exhibit "B" with the will). -
2. Margaret the widow married N. N. Spivey, and has since died. - The daughter Tempy is still living and is unmarried. -
3. Margaret's heir at law is Nancy Butler an infant daughter by her first husband. -
4. The testator's heirs at law are the Complainants

in this suit.

Issue involved:

The complainants, the testator's heirs at law are claiming the property devised by the said will on the grounds stated in their bill.

We are claiming for Margaret (the testator's widow) or rather for her infant daughter, that after the conveyance from Tempy Turner the said Margaret owned the fee simple, which has descended to her heirs at law and distributed.

What title then did Margaret own at the date of her death? -

We take three positions, and from either point of view it appears, that after the conveyance from Tempy Turner, the said Margaret owned the fee simple.

Note. - In the note of argument of the complainants' counsel he makes the statement that Samuel Turner's estate was "worth some \$1800. - consisting of realty valued at \$800. - and "personalty valued at some \$1000. -". There is absolutely nothing in the record upon which to base this statement, and it is in itself untrue. - We do not understand

how the value of the property can affect the rights of the parties or aid the Court in the solution of the questions involved; still, since the complainants' counsel has deemed it of importance, we state, and it may be made a matter of proof, that the realty is worth from \$500. to \$700. - and the personalty ~~was~~ worth not to exceed \$300. - -

Note again. - Tempy Turner is still living and is unmarried. - The estate created by the will certainly and unmistakably ^{continues} during her "life or while she remains single". -

Therefore until Tempy Turner's death or marriage the complainants ^{have} no shadow of a right upon which to found a suit. -

Whatever questions may arise at Tempy Turner's death or marriage, until that event happens the right of Margaret's heir at law and Administrator to hold the property and use it, is good ~~against~~ by the express and unmistakable language of the will itself. -

Even if it be true that Samuel Turner ~~did not die~~ ^{did die} intestate as to any portion of his estate it is only as to "what may remain" at Tempy Turner's death or marriage. - Meanwhile Margaret Turner's heir at law has succeeded to her rights and may use the property for

her own benefit in any way she pleases.

Note particularly: The complainants found their claim upon the alleged partial intestacy of Samuel Turner.

Partial intestacy is never favored by the Courts. In order to warrant such a construction to a will there must be a plain case. - It is the last resort in the case of ambiguous or doubtful wills. - This we regard as an established doctrine of the law. - "The Courts have for a long time inclined very decidedly against adopting any construction of wills which would result in partial intestacy, unless absolutely forced upon them."

Mayo Trustee v. Myers Exr W. Law Journal
October 1882, p. 640. -

2 Medfield on Wills p. 442. -

First Position:

By the very terms of the will, and by language legally sufficient for the purpose, we insist that the widow Margaret takes a vested remainder in fee simple subject only to the joint estate during the life of Jemmy Turner or until she marries.

The intent of the testator is the guiding star. He says they "shall have and hold my entire

estate both personal and real". - Here we have very sweeping and comprehensive language which is very clear in its meaning. - He evidently intended to dispose of his whole estate. - He did not intend to die intestate as to any part of it.

The words "should she marry or die while my wife lives" were not intended to make Margaret's remainder in fee simple contingent upon the fact that Emily Turner should marry or die before Margaret's death. - They refer simply to the time during which the joint estate is to continue, as the context shows. - At the expiration of the said time the property is given absolutely to Margaret and the joint ownership ceases. The words constitute a "condition in law" ^{annexed to} or "limitation" of the joint estate, just created, and do not import or annex any contingency to the remainder given to Margaret. - Margaret's remainder is vested and not contingent.

2 Minors Institutes, pp. 230-231 - 2^h.

Saml. Turner's other children were grown and provided for. - The language of the will very clearly indicates that his single daughter and his wife were the only objects of his bounty. - The construction we here contend for is reasonable, is warranted by the language used,

is just and equitable, will certainly violate no rule of law, and will best effectuate the intention of the testator. -

As the widow Margaret purchased Tempy Turnor's interest in the property, the particular estate for Tempy Turnor's life became merged in the fee simple remainder in Margaret, and therefore at Margaret's death descended to her heir-at-law, the infant defendant Nancy Butler. -

N. B. - The complainants' counsel in his note of argument has misquoted the will. - He has placed a period after the word "single", and he has commenced the next word "should" with a capital "S". - The original will is not thus punctuated. -

The testator was an unlearned man, but we think that the words of his will clearly manifest his intention to have been what we have just claimed. ^{still} ~~but~~ the complainants seem to insist upon discarding the "intention" of the testator and would construe the will by narrow technical rules, - and there too, we confidently meet them, ~~side ourselves from~~ ~~placed on the rock of~~ ~~principle~~ ~~precedent and authority~~, backed as we are by reason, principle precedent and authority. If the Court is disposed to take a technical

view of the matter then this is our
Second Position: The widow Margaret by virtue
of the testator's will and the conveyance from
Tempy Turner, being seized of an estate of freehold
in the real estate, i.e. during the life of Tempy
Turner or until her marriage, with remainder
to herself in fee simple (which is equivalent to
a remainder to her "heirs" or "heirs of the body"),
by virtue of the Rule in Shelley's Case takes
an estate in fee simple absolute in the said
real estate. - And the same rule determines
the title to the personality. -

The Statute Code (1873) chap 112 § 11 abolishes the
Rule in Shelley's case only where the estate of freehold
is for one's own life. - It does not affect the rule
where there is any other estate of freehold. -

In the case at bar Margaret Turner held an estate
of freehold, for the life of Tempy Turner or until
her marriage, hence the Statute abolishing the
rule does not apply. -

2 Minors Institutes p. 352 - 6th. -

Instances of the application of the Rule in Shelley's case
may be seen in 2 Minors Institutes pp. 315 - 6, 349 -

See also Harnes Remainders 33. - 36 - 40 - 74 -

Moore v. Brooks 12 Gratian 135 & seq.

Hall v. Smith 25 - Gratian 70 & seq.

Third Position: We maintain and with confidence that the will gives a joint estate in fee simple absolute to Margaret and Emily Turner.

This seems to be the only point which the complainants' counsel deems worthy of attention in his note. - But here he labors very learnedly and with great care to argue out of his way the long line of English and Virginia decisions which so fully sustain our position. -

~~By quoting very fully from the decisions upon which no rely he has saved us some trouble~~

The will gives Margaret and Emily a fee simple and the remainder is void for uncertainty.

Reasons. -

The will says that they are to "have" and hold the entire estate real and personal. -

They are empowered to make any use they please of it. -

They are empowered to use it all if they see fit to do so. -

The gift of "what may remain" at Emily Turner's death or marriage is void for uncertainty. -

Who can tell what will remain at Emily Turner's death or marriage? -

Even if there be no absolute power of disposition expressly given, the devise over of "what may remain" at Emily Turner's death

or marriage implies an absolute power of disposition. -

This creates a fee simple -

There can be no remainder after a fee simple. -
The construction here contended for has been long settled both in England and in Virginia. -

We refer to Guy v. Montague 3 Browns P.C. 314

Wynne v. Hawkins 1 Bro. Ch. Rep. 179

Sprague v. Barnard 2 Bro. " 385-

Pushman v. Tilliter 3 Vesey Jr. 7.

Dall v. Kingston 1 Merivale 314

Flanders v. Clarke 1 Vesey Sr. 9.

Virginia cases -

Riddick v. Coloon 4 Randolph 530 seq.

Burwell v. Anderson 3 Leigh [356] seq.

Sherman v. Sherman 1 Washington 266

May wife v. Jones 20 Gratton 692 seq.

Missionary Soc. M. E. Church

v. Calverts Adm. T. 32 Grat. 357H.

See also 2 Minors Institutes 828. at bottom of page. -

2 Minors Institutes 969-970. -

C. Welton v. Cooper 4 Leigh 408 & 409. -

In delivering the opinion of the Court in the case Reynolds v. Lee, Virginia Law Journal Octo. 1881 p. 650. Judge Anderson uses this language as embodying well established principles of law. - "Notwithstanding the bequest is to the widow in express terms during her natural

"life, yet, if by other clauses of the will, she had
"been permitted to use and dispose of the subject
"absolutely at her pleasure, or if so much as
"may remain undisposed of at her death had
"been given over at her decease (which implies
"a power of unqualified disposition), the devise
"would be construed by a necessary implication
"of the testator's intention to take a fee simple."

We shall not enter into a discussion of the reasons
upon which these decisions are founded, nor
make a laborious commentary upon them. -
The reports are all easily obtainable and
we shall leave your Honor to make all the
necessary comparisons and draw all the
necessary distinctions. -

We however call especial attention to the
case of May v. Jones 20 Grattan 692. - In
that case Mr. Conway Robinson goes over the
whole ground in his clear, exhaustive and
able way. - We think that a mere repetition
of his argument and the decision there
reported settles the case at bar in favor
of the heir at law of Margaret Turner. -

This then it seems is the conclusion of the whole
matter. - Inasmuch as the entire ~~pt~~ estate
real and personal was given to Margaret

and Emily Turner to have and hold and use for their joint benefit, and the devise over was only of what might remain of the estate (which implies a power of unqualified disposition) it follows, if the decisions referred to are law, that they took a fee simple under Samuel Turner's will. - They had a right jointly to dispose of the entire estate so as to leave nothing remaining at Emily Turner's death or marriage. -

After the deed from Emily Turner to her Margaret had the same power of absolute disposition, which constitutes a fee simple estate. -

And ^{upon} ~~since~~ Margaret's death her title and rights descended to her Administrator and her heir at law Nancy Butler. -

Withers & Prentiss.

Isle of Wight.

Spiray's Adm. Co.

ads Note
for defendants.

Turner & others