REPORTS

OF

C A S E S

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA :

WITH SELECT CASES,

RELATING CHIEFLY TO POINTS OF PRACTICE,

DECIDED BY

THE SUPERIOR COURT OF CHANCERY

FOR

THE RICHMOND DISTRICT.

VOLUME II.

BY WILLIAM W. HENING AND WILLIAM MUNFORD.

FLATBUSH, (*N. Y.*)
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1809.

DISTRICT OF VIRGINIA, TO WIT:

BE IT REMEMBERED, That on the twenty-first day of March, in the thirty-third year of the Independence of the United States of America, WILLIAM W. HENING and WILLIAM MUNFORD, of the said district, have deposited in this office the title of a book, the right whereof they claim as authors, in the words following, to wit:

"Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia: "with Select Cases, relating chiefly to Points of Practice, decided by the Superior Court of "Chancery for the Richmond District. Volume II. By William W. Hening and Wil- "liam Munford."

IN CONFORMITY to the act of the Congress of the United States, entituled, "An act for "the encouragement of learning, by securing the copies of maps, charts, and books, to the "authors and proprietors of such copies, during the times therein mentioned;" and also to an act, entituled, "An act, supplementary to an act, entituled, an act for the encouragement "of learning, by securing the copies of maps, charts and books, to the authors and proprie- "tors of such copies, during the times therein mentioned, and extending the benefits thereof "to the arts of designing, engraving and etching historical, and other prints."

WILLIAM MARSHALL,
(L. S.) Clerk of the District of Virginia.

" by the parties, that they had a right to *presume* and *find* " that a patent had formerly issued for the land in question, " if such fact was, in their opinion, a rational inference " from the facts proved to them upon the trial, and found " in the verdict rendered by the Jury upon that occasion."

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Archer, Adm'r of Tanner, v. Saddler.

Judgment REVERSED, and the cause " remanded to the " said District Court, in order that such further facts " material to the cause, and not agreed by the parties, as " are not already found by the Jury formerly impanelled, " may be found by a Jury to be impanelled for that pur- " pose; on which occasion the said District Court ought to " instruct the Jury that they have a right to presume and " find that a patent hath formerly issued for the land in " question, if such fact shall, in their opinion, be a rational " inference from the evidence which shall then be offered " to them."

Elizabeth Upshaw *against* Le Roy Upshaw, and others.

ON an appeal from a decree of the Superior Court of Chancery for the *Richmond* District Court, pronounced on the 3d of *June*, 1803, in favour of the appellees, as plaintiffs, against the appellant, defendant.

A husband dying in the life-time of his wife has not a right to *devise* away slaves, to which *she* is entitled in remainder or reversion, the *particular estate* having not expired; though he may, in his life-time, *sell* his and her interest in them, for a valuable consideration.

In such case, however, if the husband does devise such slaves away from the wife, and devises other property to herself for life with remainder over to other persons in fee-simple; and she takes possession of the estate devised to her by him; holds it for many years, and then disposes of part of it to those entitled in remainder, in consideration of their enlarging her interest in the residue to a fee-simple: she thereby makes her *election* to accept the provision made for her in the will, and precludes herself from holding the slaves also; these circumstances together with her taking possession of the slaves, being sufficient evidence of her having such knowledge of the two funds as is requisite to make such election obligatory.

Interest allowed to a devisee of slaves, in remainder, and certain expenses of maintenance, &c. the devisee having paid a sum of money to relieve them from execution, while in possession of tenant for life, and afterwards, supposing herself entitled to them, and having taken them into her own possession, was compelled by a Court of Equity to relinquish them.

APRIL, 1808.

Upshaw v. Upshaw, and others.

This suit grew out of the last wills of *John Hunt* and *William Upshaw;* and the sole question was, whether, under the circumstances of the case, *Elizabeth Upshaw*, sister of the former and wife of the latter, by accepting the provision made by the will of her husband, had not so far made her election, that she could not afterwards retain the property which the said *Hunt*, during the time when she was the wife of the said *Upshaw*, had devised to her, and which property her husband had bequeathed to other persons.

The facts were these. *John Hunt*, being entitled to the reversion of a number of slaves after the death of his mother, *Ann Upshaw*, who was still living, made his will on the 28th of *December*, 1760, which consisted of the following bequest only: "I give and bequeath unto my sister "*Mary Ann Dillard*, and *Elizabeth Upshaw*, all my ne- "groes after my mother's decease to be equally divided, "except one young negro named *Cemp*, to *James Upshaw*, "to them and their heirs lawfully begotten forever." The testator died soon after, and his will was duly proved and admitted to record in the Court of *Essex* County, on the 19th of *January*, 1761. *Elizabeth Upshaw*, the legatee named in the will, was at that time the wife of *William Upshaw*, who, on the 17th of *January*, 1761, made his will, whereby he "lent to his said wife, *Elizabeth Upshaw*, "the whole of his estate both real and personal during her "widowhood, and after her decease to the heirs of *James* "*Upshaw*, to be equally divided amongst them," &c. and on the 1st of *June*, 1761, he annexed a codicil in these words: "N. B. The negroes in the possession of Mrs. "*Ann Upshaw*, that *was gave* my wife by her brother *John* "*Hunt*, my part I desire may be equally divided amongst "my uncle *Forest Upshaw's* three children at their mother's "decease, *Leroy*, *Milley*, and *John*, to them and their heirs "forever."

Of this will he appointed his wife and *James Upshaw*, executrix and executor.

William Upshaw never reduced those negroes into possession, having died shortly after making his will, (which, with the codicil, was duly proved on the 17th of *August*, 1762,) and *Ann Upshaw*, the tenant for life, having survived him, died in the year, 1795. *Elizabeth*, the widow of *William Upshaw*, accepted the provision made for her by the will of her husband, and after being in possession of his whole estate for more than twenty years, she gave up part of it to those entitled in the remainder, (the children of *James Upshaw*,) in consideration of their enlarging her interest in the residue to a fee-simple: she also, on the death of *Ann Upshaw*, took possession of a moiety of the slaves which had been bequeathed to her by her brother *John Hunt*.

The appellees, (the complainants in the Court of Chancery,) are the three children of *Forest Upshaw* named in the codicil to *William Upshaw's* will, and were brothers and sisters, of the half blood of *John Hunt*. In *March*, 1797, they filed their bill in the High Court of Chancery, against *Elizabeth Upshaw*, stating the above facts, claiming a discovery of those slaves, and asserting a title to them and their profits, on the ground that the title in remainder in the said slaves after the death of *Ann Upshaw* either vested in *William Upshaw*, or, being *devised* away by him, ought not *now* to be claimed by his widow, who under his will had held property of greater value and received the profits thereof for more than twenty-five years, and thereby, as well as by the contract since made with the other legatees of *William Upshaw*, had made her *election* to submit to his will.

The appellant, (the defendant in the Court of Chancery,) in her answer, admits the wills of *John Hunt* and *William Upshaw*, but contends that as *John Hunt* was entitled as heir at law, to the slaves in reversion after the death of his mother, *Ann Upshaw*, by which they were held for life in right of dower; and, as *William Upshaw* died before the expiration of the dower estate, *he* could not deprive her of the slaves which had been specifically bequeathed to her

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by the will of *John Hunt*, and which had never been reduced into possession by her husband. None of the other allegations in the bill are denied in the answer; but she states that she was obliged to pay, together with *James Dillard*, her sister's husband, the sum of 77*l.* 16*s.* 4*d.*1-2, towards the discharge of *John Hunt's* debts, for which those slaves were liable, and advertised, to be sold by his administrator; which she supposes to have been the full value at that time, as they were under the incumbrance of her mother's dower estate; and therefore hopes that she may be considered in the light of a purchaser, inasmuch as if the slaves had died she must have lost her money, *John Hunt* having left no other estate to pay his debts; but, in any event, that she may be considered as entitled to a *lien* on the slaves, for the money so paid with interest.

The proof as to the payment of the debts of *John Hunt* was very defective, resting merely on the declarations of *Dillard* that he had paid a certain sum of money to the administrator, with some other circumstances not of themselves amounting to full proof.

The Chancellor being of opinion that the defendant *Elizabeth Upshaw* could not *righteously* retain both one half of the slaves which belonged to *John Hunt*, and the property bequeathed to her by her husband, and that by disposing of part of the latter, she had disabled herself to resign the one and elect the other, decreed that on payment by the plaintiffs to the defendant of one half of those debts of *John Hunt* with which the said slaves were chargeable, the defendant should deliver up such of them as were held by her, with the increase of the females, and account for their profits before a commissioner, who was also to state an account of the said debts of *John Hunt*.

The defendant appealed to this Court.

This cause was argued on the 29th of *June*, 1807, by *Hay* and *Randolph*, for the appellant, and by *Wickham*, for the appellees. On account of the continued indisposition of Judge LYONS, who sat in the cause, the other Judges

delayed giving an opinion till this term, when they were unanimous for affirming the decree of the Chancellor. APRIL, 1808.

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Hay, for the appellant. The first question is, *had William Upshaw a right to devise those slaves to the appellees? Or, did they not survive to his wife?* This question he had supposed was forever settled by the decision of this Court in *Wallace* and wife v. *Taliaferro* and wife,(*a*) where it was resolved, after a full consideration of the acts of 1705, and 1727, and a review of all the cases, that the husband could not devise slaves, to which he was entitled in right of his wife, unless they were reduced into possession during the coverture; and, in the event of the wife's surviving the husband, the slaves also survived to her.

(*a*) 2 *Call*, 447.

Another point arises in the case which is attended with more difficulty. It may be said that, admitting *William Upshaw* had no right to dispose of those slaves from his wife, still, as he has given her a beneficial interest under his will, she will be compelled to make her election, and cannot take both. In answer to this, the authority of *Powel* may be quoted, who expressly says that no case has gone so far as to establish this general position.(*b*) But if the doctrine be correct, as laid down by *Bacon*,(*c*) and others, that no person may claim *under* the will and *against* the will, it cannot effect the case of *Elizabeth Upshaw*: she claims those slaves under the will of *John Hunt*, not under that of *William Upshaw*. The appellees, *Le Roy Upshaw* and others, claim under the will of *John Hunt alone*.

(*b*) *See Powel on Devises*, 465.

(*c*) *See Suppl. to 7 Bac. Abr. by Gwil.* 444.

Randolph, on the same side, relied on the case of *Cull* and wife and others v. *Showell* and others,(*d*) as decisive of this question. In that case it was held that the testatrix merely intending to give away property, to which she believed she had a right, but being mistaken in that belief, the doctrine of election did not apply. The reason of the difference between our case and others is this. It may be supposed that it was never the *intention* of a man especially in the case of his wife,

(*d*) *Amb.* 727.

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to give *her* estate away. *William Upshaw believed* the negroes were *his;* for he devises them as *his part.*

Wickham, for the appellees. It was not contended that these slaves were *absolutely* vested in *William Upshaw* the husband of the appellant; for according to the decision of this Court in the case of *Wallace* and wife v. *Taliaferro* and wife, the wife surviving the husband is entitled, in remainder, to slaves not reduced into possession during the coverture; yet it is equally true, that if the husband chooses to exercise an act of ownership over them, as to release his interest, or dispose of them in any manner, he has power to do so. The husband in this case, having such right, exercises it by giving the slaves to the appellees. He gives by the same will, all his estate to his wife during her life. She accepts of the provision of the will; and afterwards puts it out of her power to renounce it, by a sale of the property. Taking possession of this estate she had a right to dispose of it. She had an estate for life under the will of her husband upwards of twenty years in possession: this she sells for other property: she sells it for value received. She must be considered as having an *interest* because she derived a *benefit*. If a wife takes as *devisee* she takes as *devisee in all respects*. She may make her election either to stand by the will or not. In this case she *has made* her election, and has by her own act, put it out of her power to renounce it.

The authority relied on by Mr. *Randolph*, even if it had not been overruled by latter determinations, does not apply. There, a person was merely exercising a *power;* she was not disposing of an estate of *her own* by will. She had no idea that she was giving away her own property. But the case of *Cull and wife* v. *Showell* and others, as to the point relied on by the opposite counsel, has been impeached in the case of *Whistler* v. *Webster*,(*a*) and other cases.

(*a*) 2 *Ves.*jun. 370.

All the cases on the doctrine of elections go to establish the principle, that a person cannot claim *under* and *against* a will.(*a*)

Thursday, *April* 28. The Judges delivered their opinions.

(*a*) *See* 7 *Bac. Abr. by Gwil.* 444. *tit.* "ELECTION," *where all the cases on this subject are collected.*

Judge TUCKER. The appellees filed their bill, stating that *John Hunt*, being possessed of several slaves and other property, made his will *December* 28th, 1760, whereby he devised to his sisters *Mary Anne Dillard*, and *Elizabeth Upshaw*, (the appellant,) all his negroes after the death of his mother *Anne Upshaw*, who was also mother of the appellees. That *William Upshaw* the husband of *Elizabeth*, the legatee, on the 17th of *January*, 1761, made his will, whereby he gave to his wife his *whole* estate real and personal during her widowhood, and after her decease to the heirs of *James Upshaw*, equally to be divided amongst them: and by a codicil dated in *June*, 1761, he devised "the negroes in the possession of Mrs. *Anne Upshaw*, that "were given to his wife by her brother *John Hunt*, "HIS PART he desired might be equally divided among "his uncle *Forest Upshaw's* three children, at their "mother's decease." The appellees are those children—and *Elizabeth Upshaw* having taken possession of the estate of her husband *William*, and enjoyed it more than twenty years, on the death of her mother *Anne Upshaw*, possessed herself of a moiety of the slaves, devised to her by her brother *J. Hunt;* to recover which is the object of the bill. The appellant admits the wills of *J. Hunt* and *William Upshaw;* but contends the latter had no right to bequeath the slaves in question; he having died in the life of *Anne Upshaw*, who held them as her dower. And that she was obliged to pay, together with *James Dillard*, her sister's husband, the sum of 77*l.* 16*s.* 4*d.* 1-2 towards the discharge of *John Hunt's* debts for which those slaves were liable and advertised by the administrator to be sold: which she sup-

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poses to have been their full value at that time, as they were then under the incumbrance of her mother's dower estate: and, therefore, hopes she may be considered as a purchaser, *J. Hunt* having no other estate left for payment of his debts; but in any event that she may be considered as having a *lien* in the slaves for the money so paid with interest.

The Chancellor decreed the *slaves* with their profits to the appellees, upon payment by them to the appellant of one half those debts of *J. Hunt* with which these slaves were chargeable. The defendant appealed.

The doctrine of elections seems to have been fully considered by Mr. *Powell*, in his treatise on devises. Therein he lays down the following principles, on the authority of *Lord Ch. J. Talbot*, in the case of *Streatfield* v. *Streatfield*.(a) "When a man takes upon him to devise what *he* "*has no power over*, upon the supposition that his *will*, "will be acquiesced under, the Court of Chancery will "compel the devisee to take *entirely*, but not *partially* "under it; there being a tacit condition annexed to all "devises of this nature, that the devisee do not disturb the "disposition that the devisor has made."

(a) 1 Cases temp. Talbot, 176.

To the same effect are the remarks of *Lord Ch. J. De Grey*, in his judgment in *Pulteney* v. *Lord Darlington*;(b) "A man may by a mean, and indirectly, *give what is not* "*his own*, either by express condition, or *equity arising* "upon an implied condition." And to the same effect is *Whistler* v. *Webster*.(c)

(b) Cited 2 Fonb. 325. note l.

(c) 2 Ves. jun. 371.

And the rule equally applies, says *Powel*, whether the benefit under the will be immediate or consequential; for though the effect in such cases is, that the devise operates as a satisfaction for the previous interest of the devisee, yet the principles by which satisfactions strictly speaking, are governed, do not apply to cases of this kind; therefore, it is *not necessary* that the thing devised should be of the *same nature*, or of *adequate value*, with the thing in lieu of which it is to be received.(d)

(d) *Powel, on Devises*, 450.

And *Lord Talbot*, where the will comprised both real and personal estate, and the land, to which one child was

entitled in tail, was thereby given to another, and a *personal legacy* to the tenant in tail, went so far as to infer an intent, that whoever took by that will should comply with the whole, and put the party to an *election of the estate tail*, or the *personal legacy*.(*a*)

To these rules there are some exceptions, or rather qualifications, as if the devisee be a *creditor*, and not a *volunteer*, and some others.(*b*)

But (it is said) no case upon this rule has yet gone so far as to establish the proposition that, if a devisor in his will takes upon himself to dispose of an estate in which he has *no interest*, but which is absolutely another's, and, in the same will, gives a beneficial thing to the owner of such estate, the owner of the estate shall either waive the benefit of the devise, or renounce his estate: the *foundation of the rule* being a *supposed misconception* of the testator as to the situation of his own property.(*c*) And this observation was particularly relied on by the appellant's counsel.

True it is, *William Upshaw*, by his codicil, gave the appellees what he had no power to BEQUEATH; his wife's interest in the dower slaves held by her mother being merely a reversionary interest, which, in the event of her surviving her husband, without his disposing thereof in his life-time, or reducing the slaves into possession, would survive to her. But it is clear from the words of the codicil, that he thought the slaves were *his own*, and that he had a power to bequeath them by his will. This was clearly a *misconception* of his right in respect to them. For, though he might have *sold* his wife's reversionary right, it being a vested interest, yet, if he neglected to do so, he could not dispose of it by *will*, but it would *survive* to her. The case of *Dade* v. *Alexander*,(*d*) I conceive, does not affect this principle; for the husband's right was in that case decided to be *absolute*, in case *he survived* the wife; but here *she* was the survivor.

But, in order to put a devisee to the alternative of either waiving his own interest under a will, or foregoing his claim to some interest disposed of therein, to which he is previously

(*a*) *Powel, on Devises*, 453. *who refers* to 2 *Vern.* 14. 617. and 2 *Vern.* 555.
(*b*) *Powel*, ib. 454. 458, 459. 463.
(*c*) *Powel*, ib. 465.
(*d*) 1 *Wash.* 30.

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entitled independent of the will, it must be clearly evinced that the devisee's taking both will defeat the *general* intent of the devisor.(*a*)

In the present case it was manifestly the testator's intention to limit his bounty to his wife to the period of her widowhood, or perhaps her life, after which he bequeaths the estate before given to her, (or rather, to use his own words, *lent to her*,) for life, *at most*, to the children of *James Upshaw*. Whether he was at that time apprised of the bequest of his wife in *John Hunt's* will, does not appear; but the codicil manifests an intention to make some provision for his uncle *Forest Upshaw's* children, the appellees; and he has done it in such a way, as to compel the appellant to elect either to forego the *use* of his property, so long as she continued a widow, or to renounce the benefit of the reversion, whenever it should happen. The devise to her being of the use of his whole estate during her life, gives great weight, I think, to this construction. In the case of *Whistler* v. *Webster*,(*b*) it is held "that a clear "knowledge of the funds, being requisite to election, no "person shall be bound to elect without such previous know-"ledge." Many other cases(1) may be cited to the same effect: and the rule appears to me to be so reasonable, just, and consonant with every principle of equity, that I think it ought to be adopted. In the present case, the compromise between the appellee and the remainder-men may be considered as some evidence of such knowledge; and the nature of that compromise is such that it would seem that, in making it, she had determined her election. Otherwise, I should have inclined to think she could not have been considered as concluded of her election, until the death of *Anne Upshaw* put it in her power to ascertain the

(*a*) *Powel, on Devises*, 466.

(*b*) 2 *Ves.* jun. 371. 2 *Fonb.* 326. note *l.*

(1) *Wake* v. *Wake*, 1 *Ves.* jun. 385. *Newman* v. *Newman*, 1 *Bro. Ch. Rep.* 187. *Boynton* v. *Boynton*, ib. 445. *Gibbons* v. *Caunt*, 4 *Ves.* jun. 849. *Hindes* v. *Rose*, 3 *P. Wms.* 125. *Purcy* v. *Debouverie*, ib. 316. 5 *Ves.* jun. 484.

amount and value, both of the property and estate bequeathed TO her, and of that bequeathed FROM her, by her husband's will. But taking all the particular circumstances of the case together, I am of opinion that the decree be affirmed, as to this particular point. But I think the Chancellor ought to have allowed interest upon the money paid to prevent the sale of the negroes by *Hunt's* executor. In that respect I think the decree erroneous; but I concur in the decree which has been agreed to in conference.

Judge ROANE. If the case of *Cull* v. *Showell*, (*Ambler*, 728.) relied upon by one of the appellant's counsel, had never been overruled, or departed from, he *might* have had more cause to be "sanguine" upon the strength of it, than he has at present. The ground of decision in that case (which was decided in 1772) has, however, been expressly overruled in the cases of *Whistler* v. *Webster*, (in 1794,)(*a*) of *Wilson* v. *Townsend*, (in 1795)(*b*) of *Blake* v. *Bunbury*, (in 1792)(*c*) and perhaps in other cases. In those decisions it is considered as the settled doctrine of a Court of Equity that no man shall *disappoint* the will under which he claims; and that, therefore, if a man bequeaths to another, property to which he has no title, but which belongs to a *third* person, to whom he gives by the same will other parts of his estate, such *third* person must elect and convey *his* property to the devisee, or he cannot take the property devised to him under the will: that the only question is, did the testator *intend* (clearly upon the face of the will) the property to go in such a manner? and that the Court will not ask whether he had *power* to do so: that it is immaterial whether the testator thought he had the right, or, knowing the extent of his authority, under the influence of this principle, intended, by an arbitrary exertion of power, to exceed it: that the legatee, in such case, cannot dispute the *ownership* of the property bequeathed to the other: and that the legatee can only take the property *on the terms on which it was given.*

(*a*) 2 *Ves.* jun. 370.
(*b*) Ib. 696.
(*c*) 4 *Bro. Ch. Rep.* 25.

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These doctrines are full up to, and even go beyond the case before us: I say go *beyond* it, because the testator not only considered the negroes in question as his own, having bequeathed them by the terms "*my part* of the negroes "given to my wife by her brother *John Hunt*," but also because, although the property in those negroes was not then absolutely vested in him, yet from the unsettled state of the law at that time upon this subject,(*a*) he might naturally have concluded the law in this respect to be otherwise. It is not equitable that, when property is given to another upon a consideration, the *property* should be exacted, and yet the *consideration* withheld.

(*a*) See *Wallace* v. *Taliaferro*, 2 *Call*, 447.

It is not necessary in this case to inquire into the *extent* of the rule that a party electing must have a clear knowledge of the situation and amount of the fund elected. In this case the compromise, made with the devisees-over, of the estate derived to the appellant under her husband's will, not only disabled her from electing the *other* interest; (she having thereby conveyed the absolute interest in part thereof to such devisees, and herself acquired the absolute interest in the residue;) but was made after so great a lapse of time, that she must have had a clear and undoubted knowledge of the value and actual situation of both the interests.

On the merits, therefore, the case is clear for the appellees. I concur, however, that the decree be corrected so as to allow the appellant interest upon the money paid by her to redeem the negroes in question.

Judge FLEMING. It is admitted by all parties that the testator, *William Upshaw*, had no right to, or vested interest in, the negroes bequeathed to the appellees; but that, under the will of *John Hunt*, the right was in the appellant upon the death of her mother *Anne Upshaw*. The most material point in the cause then is, whether the appellant, to whom her husband lent the whole of his estate during her widowhood, should be put to her election, either to take under the will, and relinquish her right to the negroes,

or to renounce all claim under the will, and take the negroes bequeathed to the appellees, which she claimed under the will of *John Hunt?*

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The case of *Cull and wife* v. *Showell and others*, in *Ambler*, 727. seems in favour of her not being put to her election; but later cases, as *Whistler* v. *Webster*,(a) and others that have been cited, have overruled that case, with some exceptions, and qualifications; and it seems now settled, that where the devisee is instructed, and hath a clear knowledge of the amount or value of the estate claimed under the will, the election must be made; but, otherwise, the legatee shall not be put to an election.

(a) 2 *Ves.* jun. 367.

In the present case it seems that the appellant must, of necessity, have been so instructed and informed; because the whole of the estate was devised and bequeathed to her, during her widowhood; and she was appointed the executrix of her husband's will; and that she, after having remained in possession of the estate, more than twenty years, made a contract with the legatees in remainder, whereby she gave up to them a part of the estate, in consideration of their conveying to her an absolute right to the residue: which affords the strongest evidence of her having already made her election with full notice and information of the value of the estate she took under the will of her husband.

But it appears clearly to me that she ought to have been allowed *interest* on the money she paid to redeem the negroes chargeable with the debts of *John Hunt:* and that, in the account to be taken of the profits of the slaves that came into her possession on the death of *Anne Upshaw*, a just and reasonable allowance ought to be made her, for the support and maintenance of the aged, the children, and others that were unprofitable, (if there be any such among them,) and for other incidental expenses which she may have incurred on their account; as I have been taught by experience, that the maintenance of a parcel of negroes,

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where a considerable proportion of them are breeding women, is rather expensive than profitable.

I am therefore of opinion that the decree is in those respects erroneous, and ought to be reversed.

The opinion of the Court was, " That there was no error " in so much of the decree of the Superior Court of Chan- " cery as decides that according to the principles of equity " the appellant cannot retain both the slaves bequeathed to " her by the will of her brother *John Hunt*, on the decease " of his mother *Anne Upshaw*, who held the same for her " life in right of dower, and the property devised and " bequeathed to her by her husband *William Upshaw*, by " whom those slaves at the death of the said *Anne Upshaw*, " were bequeathed to the appellees; and as directs the said " slaves, with their progeny, to be delivered to the said " appellees, with an account of their service and the profits " arising therefrom; and as requires the appellees to recom- " pense the appellant for the monies paid by her in dis- " charge of the debts of *John Hunt*, with the payment of " which those slaves were chargeable: but that there is " error in the said decree in not allowing to the appellant " interest upon the monies so paid by her. And this Court " is further of opinion that a just and reasonable allowance " should be made to the said appellant for the support " and maintenance of such of the said slaves as are, or may " have been aged, infirm, children, or otherwise expensive " or unprofitable to the holder; as also for such taxes, " doctor's bills, and other reasonable expenses paid or in- " curred by the appellant on account of those slaves, as " she shall be able to prove: Therefore it is decreed and " ordered, that so much of the said decree as is contrary to " the above opinion be reversed and annulled, and that the " residue thereof be AFFIRMED," &c.