

was entitled \*to no more than one-third for life, as that of him who was entitled to the fee simple of two-thirds, and of the reversion of the one-third; and consequently, if the widow were allowed \$3,000, she would have awarded to her, in that one-third, a sum of money which must be considered as including the full price of the reversion; to no part of which could she be entitled. It is clear, therefore, that she should not, in any case, be allowed as much as one-third of the purchase money of the whole estate. But, if one-third of the proceeds of sale were put out on interest, the interest which the whole third would so accumulate, would arise, not only from so much of it as represented the value of the widow's dower, but also from that which must be considered as the price of the reversion. Hence it would be as clearly wrong to give to a widow the whole of the interest arising from one-third of the proceeds of sale as to award to her the one-third of the principal itself. This reasoning, it is obvious, applies with no less force to the case of a tenant for life of the whole as to the case of a tenant in dower. It would be, in each case, directly, or in effect, to take away a part of the property of the reversioner or remainderman, and to give it to the particular tenant. But it may well be doubted, whether a Court of justice has the constitutional power, in such a manner, to divest one person of his property, and transfer it to another. Yet, in making the calculation for the Chancery rule it was assumed, as we have seen, that the widow was entitled to the interest of one-third of the proceeds of sale for life. This, therefore, is the first element in which the Chancery rule is radically wrong.

It should also be recollected, in all cases of this kind, where it may be required, out of the purchase money or value of the whole, to separate the value of the particular estate from that of the inheritance, that it is necessary, in the first place, to attend to the true legal extent of the particular estate. Tenants in dower, by the curtesy, &c. are not allowed to commit waste; that is, they cannot cut and sell timber; open, and work unopened mines, &c.; and being restrained from deriving any such profits from the estate, the value of it, in regard to all such profits, properly forms a part of the price of the reversion or remainder; and the value of such profits also represents that which is the difference in price between a particular estate the tenant of which is, and one the tenant of which is not impeachable for waste. But this distinction does not appear to have been at all attended to in making the calculations \*for the Chancery rule. This therefore is another element in which it must be considered as materially erroneous.

It appears, that the present value of a widow's dower was calculated for the Chancery rule at compound interest; because in England the present value of such estates, it is said, is calculated

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