

the trust estate and nothing more, and the question is, whether the issue of the female slaves, upon the true construction of this will, passes as a part of the income? I entertain a very strong opinion that the construction contended for by the complainant in this case would not be in accordance with the intention of the testator, and it seems to me equally clear, that it is in conflict with the principles of humanity, which, unless found in opposition to some settled rule or established legal policy, are certainly deserving of consideration.

To separate the issue from the mother, and either transfer it, as the bill prays, to the complainant, or sell it that the purchase money may be divided between the complainant and Sarah Floyd, of course involves the necessity of determining at what age this may be done. The infant cannot be torn from its mother and sold or transferred to the complainant. No one would buy, and humanity would cry out against it. There would have then to be a periodical partition, or sale, after first determining at what age the offspring could with propriety or without shocking the public sensibility, be separated from the mother. Does any one believe that the testator intended this, when he said that the "income" arising from the trust property should be applied to the mutual benefit of his uncle (the complainant) and his aunt, Sarah Floyd? I cannot think so, nor do I think that the reasons which have influenced the courts to give to the legatee for life or for a term, the after-born issue, apply to a case where a mass of property is left in trust as here.

It is clear that if the terms of the bequest in this will simply gave the right to the service and labor of the slaves, the title to the issue did not vest in the first takers, but will pass with their parents to these who are entitled in remainder upon the termination of the life estates. Such was declared to be the law by the Court of Appeals in the case of *Sutton vs. Crain*, before referred to. In that case it was said, that the word "use" was so qualified by its connection with the word "hire," as to give the legatee for life nothing more than a right to the service and labor of the slaves. It was remarked by the judge, who delivered the opinion of the court in that case, that but for