

eye of a court of equity, the will of the testator had converted the real into personal estate, and the actual conversion by a sale could not be necessary to give validity to rights founded upon the equitable principle. That principal alone carries with it all the consequences upon the rights of the parties which would result from an actual sale; and, therefore, the circumstance that the sale had actually taken place in the lifetime of the wife, in the case of *Hurt and Fisher*, could not be necessary to establish the title of the surviving husband.

In the case of *Leadenham vs. Nicholson*, 1 *H. & G.*, 267, the learned judge who delivered the opinion of the court, re-asserted the principle that land directed to be sold and converted into money, will, before a sale, be considered as money, and pass as such.

My opinion, therefore, is, without multiplying authorities upon a point which seems very clearly settled, that Samuel W. Thomas, the surviving husband of Isabella, is entitled to receive the legacy of two thousand dollars bequeathed his wife.

The second question has reference to the right of the testator's wife, Matilda B. Harrison.

It appears, that seventy of the eighty acres devised her by her husband, being part of his dwelling plantation, were not his property, but the property of the Honorable Kinsey Johns, and that, by consent of all parties, those seventy acres have been, or are to be, given up to him. Mrs. Harrison, in her answer says, that she made no objection to such surrender, under the belief that she was to be fully compensated therefor, and the question is, whether she is entitled to such compensation out of the residue of the estate.

She did not renounce the will, and as has been stated, is entitled to one-third of the proceeds of the sales of the real estate after payment of debts, and to ten acres, the residue of the eighty acres devised her by the will.

I am of opinion, that Mrs. Harrison, (the widow,) is not entitled to compensation out of the residue of the estate, for the loss of this portion of the real estate devised to her by her husband, unless it shall turn out that the share which she will re-