

heritance during the coverture of which any issue which she might have had, might by possibility have been heir. 4 *Kent Com.*, 35.

It seems to me impossible to say, that any issue which either of the complainants might have had, by their respective husbands, could have taken this property as heirs, and if not, one of the prerequisites of the dower claim is wanting.

The complainants however insist, that the covenant in the deeds, binding Stewart the grantor, when required by the grantees, their heirs and assigns, to convey the demised premises in fee, at their expense, make these deeds effectual to pass the fee; that the lease of the term for years, operating as a bargain and sale, and the use and possession being in the bargainee, the covenant operates as a release, by way of enlargement of the estate, and thus transfers the entire interest of the bargainor.

But this mode of conveyance by lease and release, it is thought, cannot be made effectual in this way, the lesser estate must be created first by a bargain and sale, to which the statute of uses awards the possession, and the lessee being thus in the enjoyment of the use by the bargain, and of the possession by the statute, is competent to receive a release of the reversion. But if he is not thus in the possession and enjoyment of the lesser estate, how can the release operate by way of enlargement. There would, in truth, be nothing to enlarge. 4 *Kent*, 494; 2 *Thomas' Coke*, 581, *note*.

The covenant in these deeds could not, in my opinion, in any view of the subject, be regarded as releases at common law. They certainly were never intended so to *operate*, but were merely designed to bind the grantor, at some future time, when requested by, and at the expense of the grantees, to convey them the estate in fee. But unquestionably the parties never supposed, or designed by this covenant, to adopt an artificial mode of conveyance, which, if effectual, at once transferred the entire estate from the grantor to the grantee.

But the complainants' solicitors contend, that in a court of equity, which considers that as having been actually done, which is agreed to be done, these deeds, by force of the cove-