

cept the money and *choses in action* were of that perishable nature, that their use necessarily involved their consumption; and, therefore, the legatee for life took the absolute property in them.

But, with regard to the money, or *choses in action*, which have been converted into money, the rule is different, and it was the duty of the defendant to have made an investment thereof; and that, if he has not done so, but has permitted the legatee for life to consume them, or has done so himself, he is liable to these complainants and their sisters, and the case must go to the Auditor, to take the necessary account. I am also of opinion, that there is evidence to show that the testator did leave certain sums of money in coin, which the defendant omitted to include in the inventory; and the Auditor will be directed to charge him, in respect thereof, with such an amount as may be justified by the proof.

The proof, in reference to the negro slaves is, to some extent, contradictory; but, upon a careful examination of it, I am of opinion, that the weight of evidence is in favor of the title of the testator; and, therefore, the Auditor will be instructed to charge the defendant, Burch, with the value of the woman Eliza and her services, and, also, with the value of the services of Maria, from the period of the death of Barbara Jackson, in 1843, to the death of Maria, in 1843. The children born during the life of the legatee for life, are her property; and, of course, with regard to them there can be no recovery in this case.

It is, thereupon, ordered, this 12th day of May, in the year 1851, that this case be, and the same is hereby, referred to the Auditor, with directions to state an account, or accounts, in conformity with the preceding opinion, from the pleadings and proofs now in the cause, and such further proofs, if any, as the parties may lay before them.

BRICE T. B. WORTHINGTON for Complainants.
CLARK C. MAGRUDER for Defendants.