

Perk. sec. 329. And the rule is the same as to any deterioration of the property arising from natural causes, 4 Kent's Comm. 67.

Upon the commission being returned the Court confirms it or rejects it as in other cases. The final decree provides that the widow shall hold in severalty for life the part assigned by the Commissioners to her for her dower.

Mesne profits.—*In *Sellman v. Bowen*, 8 G. & J. 50, the Court of **26** Appeals observed, that the recipient of the rents and profits of the husband's land is in equity considered a trustee or bailiff, and is therefore liable for an account of his stewardship. The inference might be drawn from this that the jurisdiction of equity to decree mesne profits to the widow is independent of the Statute of Merton, and such is the view of Mr. Roper, H. & W. 453, 454. He goes on to say that an account of mesne profits may be enforced against the alienee or heir, without regard to any previous demand made by the widow, or to the circumstance whether or not the husband died seised. In *Sellman v. Bowen*, however, the Court determined that the account could only be taken from the time of demand, see *Stewart v. Carr*, 6 Gill, 430, and expressly admitted the analogy of the Statute of Merton on another point.

If the widow die without having demanded her dower, the right to mesne profits does not survive to her representatives, and so it was held in *Steiger v. Hillen*, 5 G. & J. 121, and in *Kiddall v. Trimble*, 8 Gill, 207, although Ch. Bland seems in the first case to have thought otherwise. From these cases it appears that the claim of the widow for mesne profits can not be supported, if she had not already recovered her dower at law, or does not sue for it also in equity. If she consents to take dower without receiving her proportion of rents and profits she can never afterwards recover them, although if she dies pending a suit for dower, equity will allow rents and profits to her representatives. But this case is subject to the exception that if the legal estate out of which the profits are to spring is gone, the claim to such profits falls with it, unless some equitable circumstances exist which prevented her from preferring her claim, such as fraud, misrepresentation, or concealment, or some legal impediment whereby a demand of dower on her part would have been rendered fruitless. Yet in *Lawes v. Lumpkin*, 18 Md. 334, it was held that an heir might, on a bill for partition against the other heirs and the widow, obtain a decree that she account with him for his proportion of the rents and profits received by her; an authority somewhat inconsistent with the notion that a formal assignment is necessary before the widow's right to mesne profits accrues. And Perkins, sec. 451, says, "But if all the lands which the husband had were holden in socage, and his wife hath them as guardian in socage, she shall be allowed one-third part of the profits upon her account in allowance of her dower in the meantime, but in such case she shall not endow herself of the third part of the lands or tenements to hold in freehold;" and see *Hilleary v. Hilleary's lessee*, 26 Md. 274, that the widow, where her title of entry has not accrued by assignment of her part in certainty, cannot defend an ejectment upon her possession. And in the next section he says that it is no answer for the heir to a writ of dower to say that the widow might endow herself. *Hamilton v. Mohun*, 1 P. Wms. 118, and *Graham v. Graham*, 1 Ves. Sen. 262, are to the same effect. On the other hand if the defendant dies the widow will be allowed in equity to prosecute her claim against his representatives,