

provided at the time of filing the bill the legal right to damages is not gone, 1 Story Eq. sec. 625.

In *Sellman v. Bowen*, *supra*, it was also decided that the widow, having recovered her dower at law against the alienee of the husband, might proceed against him in equity for rents and profits, and it was further held, overruling on that point *Steiger v. Hillen*, that rents and profits could not be recovered against the alienee at law. In *Darnall v. Hill*, 12 G. & J. 388, two bills had been filed within a day of one another, one for mesne profits and the other for an assignment of dower, on both of which a decree had passed, and the Court of Appeals deduced from the proceedings of the parties the conclusion that, by mutual agreement, a decree was to pass for dower in the one case and the question of rents and profits was to be litigated in the other.

**27** \*As against the heir in possession no allegation of a demand for the assignment of dower is necessary; he is answerable for damages from the death of the husband even without demand, unless he plead *tout temps prist*. This defence may be taken by answer, but it must be filed in time, and in *Darnall v. Hill*, *supra*, the Court of Appeals doubted whether the mere expression of a willingness to assign dower is equivalent to such a plea, and even when such a defence is taken, damages may be decreed from the date of subpœna, *ibid*. In *H. K. Chase's* case, 1 Bl. 206, the Chancellor said that it was the course of the Court to assign the widow's dower and universally to give her an account of rents and profits from the death of her husband, and the same law is laid down in *Wells v. Beall*, 2 G. & J. 468. These cases must now be understood as applying only where the heir omits to plead *tout temps prist*. As against the alienee of the husband mesne profits can only be recovered from the time of demand and refusal to assign dower, *Steiger v. Hillen*, *Sellman v. Bowen*, *supra*. It should therefore seem that it is essential to set out the demand in the bill, see *Stewart v. Carr*, *supra*. It ought to be observed also, that in equity mesne profits are recoverable only in respect of the possession of the defendant, and although a possession once shewn would be presumed to continue until the contrary was proved, the defendant by showing that his possession has terminated may relieve himself from all account subsequent to that time.

**Limitations.**—It was also held in *Sellman v. Bowen*, that by analogy to the Statute of Merton limitations were no bar to a bill for mesne profits. But a Court of Equity will not look with favour on stale claims, and therefore in *Steiger v. Hillen* and in *Kiddall v. Trimble*, where a lapse of twenty-five years in the one case and of thirty in the other had occurred, and the delay was unexplained, the Court of Appeals said that it would be against policy and convenience to allow the commencement of a controversy for rents and profits, and see *Chew v. Farmers' Bank*, 9 Gill, 361, S. P.

**Crops.**—It has been said that in *Sellman v. Bowen* it was held that the widow was entitled to an account according to the improved value of the premises from the time the improvements were made. In *Darnall v. Hill* the Court of Appeals said that the widow would not strictly be entitled to one-third of the gross amount of the crops, but that she would have a right to one-third of the net amount thereof, and would be entitled to an account of the crops, so that the net annual value might be ascertained, and to a