

in her favour. The same reasoning would apply, and perhaps was applied in this case, to infants, and to the widow marrying again, although the latter would not be, technically a *widow*. The subject is not without difficulty. If it were a case of election, the widow would undoubtedly be entitled to file a bill to have an ascertainment of the respective values of the provision for her and of her dower and thirds. Yet such a proceeding now would be in most cases fruitless, and she might be compelled to renounce in the dark. It was held in *Addison v. Bowie*, 2 Bl. 606, that a Court of Equity would make an election for infants, being guided therein by the benefit of the infant under the circumstances. And so in the case of a married woman, there will, in general, be an inquiry as to what is most beneficial for her, and she will be required to elect within a given time, 1 *White and Tudor's Leading Cases in Equity*, 303. Perhaps a renunciation by a *feme covert* and her husband would be sufficient, and, perhaps also, on a proper application a Court of Equity might interfere in behalf of an infant or a lunatic.

It follows therefore that every valid devise or bequest to the wife, or for her use or benefit, whether the interest be *in presenti* or *in futuro*, as by way of remainder, is a bar of dower or thirds, unless it be otherwise expressed in the will, or unless the widow herself personally (except, perhaps, in the cases of infants and lunatics) renounce within the limited term. If she neglects or is incapable from any cause to renounce, the devise takes effect independent of any assent on her part. Nor is a renunciation in any other form than that prescribed by the Code of any effect. However differently she may manifest her unwillingness to abide by the will, and even if she be prevented by physical inability, absence, or ignorance of the contents of the will, from complying strictly with the terms of the law she will be bound; although Chancellor Bland seems to have thought in *Margaret Hall's case*, 1 Bl. 203, that in a strong case of misapprehension or fraud she might be relieved. And should she die within the term her right does not vest in her representatives. It seems too that a **308** *contract of the widow with the executors of her husband, whereby she agrees not to renounce, is only personal to them and does not bind the assets of the testator, *Callis v. Tolson*, 6 G. & J. 80.

The effect of the widow's renunciation is to strike from the will the devise in her favour,²⁴ and it may have an important effect on the rights of the other devisees in the will.²⁵ In *Darrington v. Rogers*, 1 Gill, 403, the

²⁴ Where a widow renounces, she takes not under the will but in opposition to it. She is entitled to receive her share of the estate in kind. The devises and bequests made to her entirely fail of effect. An intestacy is produced as to the property so devised or bequeathed to her. This property falls into the residue of the estate and passes to the heir at law, or distributee, subject to the rights of the widow. *Devecmon v. Shaw*, 70 Md. 229; *Kuykendall v. Devecmon*, 78 Md. 537.

²⁵ They are not affected by the widow's renunciation except to the extent that the devises or bequests to them may be diminished by the award to the widow of her legal portion of the estate. *Devecmon v. Shaw*, 70 Md. 277.

And where a loss occurs to the devisee in such manner, it is a loss by