

If the widow die without demanding her dower, the executor cannot recover the rents and profits: the cases having only gone to the extent of entertaining a bill for the profits, where the widow dies, pending her bill for dower.

Whilst the suit for rents and profits was depending in a court of law, the plaintiff voluntarily aliened the legal estate out of which the profits sprung, and the direction of the court to the jury being generally, "that the plaintiff was not entitled to recover," it was HELD—

That the court may have been of opinion, that, as the damages, which are given for the detention of the dower, are regarded as consequential or accessory, they could not be separately demanded.

Had the action at law been for the dower itself, instead of being for the rents and profits of the land withheld from the widow, her alienation pending that suit, would have been an effectual bar to her recovery.

The proper form of action by which these profits, as damages, may be recovered, is an action of trespass, as *mesne* profits are sued for, after a recovery in ejectment.

The plaintiff having sued for these rents and profits at law, and having failed to recover them there, the question as to them must be regarded as *res adjudicata*. They cannot form the subject of a new litigation—the judgment at law having foreclosed the plaintiff.

The title to the land itself must be first vindicated, before a claim for the fruits can be admitted, and a bill for the rents and profits would be premature, until the dower itself is recovered.

The statute of limitations does not apply to the wife's remedy, by action, for her dower, though it does not follow, that lapse of time may not operate as a bar to a bill for an account.

[William Jacob, of the city of Baltimore, being seized and possessed of certain real estate in said city, departed this life on the fifteenth day of July, in the year 1804, leaving his wife Jane Jacob surviving him; who took possession of said real estate, under the mistaken impression that she had a life estate therein, and continued to hold the same until her death, which occurred on the 19th July, 1837. He had issue by his said wife, a daughter, named Mary, who died before him, and who, in her lifetime had intermarried with a certain Thorndick Chase, by whom she had issue three children, William, Anne and Maria, all of whom were living at the death of their grandfather. William intermarried with the complainant in the year 1807, and died in 1809, leaving issue a daughter named Maria, who died in infancy; and his widow, the complainant, afterwards married John Kiddall who also died. Maria Chase married Samuel Handy, and died before her brother William, without