

SADLER vs. BEAN AND WIFE.

Marriage suspends the legal existence of the wife during coverture, and vests her personal estate in her husband.

Her future acquisitions of personalty vest in him also, unless settled upon her to her sole and separate use by apt words excluding the marital rights of the husband: and this, whether the property be conveyed directly to her, or to a trustee for her use.

If such apt words are used in a conveyance to the wife, the husband becomes her trustee.

Appeal from the Johnson Circuit Court.

Lucian O. Sadler brought an action of assumpsit, by attachment, against Jeremiah Bean, in the Johnson circuit court. The sheriff attached a negro woman named *Rhoda*, as the slave and property of the defendant. Polly Bean, wife of the defendant,

by the said defendant as her trustee, interpleaded, claiming the slave attached as her separate property. Plaintiff took issue to the interplea, and the court, sitting as a jury, (Judge FLOYD presiding, in September Term, 1847,) found in favor of the claimant, and rendered judgment discharging the slave from the attachment. The plaintiff moved for a new trial, which the court refused, and he excepted and put the evidence on record. Mrs. Bean claimed the slave under a clause in the will of her father, Johnathan Logan, which is copied in the opinion of this court. It was proven that she intermarried with Jeremiah Bean, defendant in the attachment, in the lifetime of said Logan, and that the slave named in the will was the same attached. Sadler appealed.

E. H. ENGLISH, for appellant. The evidence shows that the father of the lady devised the slave to her absolutely. She married Bean before the bequest, and on the devise the property in the slave vested in him, and became liable to his debts. The law is well settled on this subject, and is found in all the elementary books. There are no words in the will creating a separate property in the wife.

SCOTT, J. In this case two supposed errors of the court below are assigned: 1st. The overruling of the appellant's motion for a new trial: 2d. The judgment of the court below for the claimant of the slave.

The wife, through her husband as trustee, claimed the slave, levied upon as the property of the husband, as her sole and separate property under the following clause of the last will and testament of her deceased father, which was executed and took effect after the marriage and during the life-time of the husband and wife, to wit: "Item 4th. I will and bequeath to my daughter, Polly Bean, a negro girl named Rhoda, one mare, saddle, bridle, two cows and calves, which are now in her possession." The will contained no further provision by which either this or any other

bequest contained in it, was settled to the sole and separate use either of Polly Bean or any other female.

Marriage suspends the legal existence of the wife during coverture, and invests the husband with the absolute title to all the personal estate of the wife, and such of her choses in action as he may reduce into possession during the coverture. Over all such he has unqualified dominion with untrammelled right of disposition. And such also are his rights in all like acquisitions of the wife during the coverture, unless the donor shall accompany the gift with the limitation to the sole and separate use of the wife; and this can be done only by apt words to negative the marital rights of the husband,—the presumption of law being always in favor of these rights. Without such apt words, by which are to be understood words that, by their import, exclude the husband from the benefit intended to be bestowed, although the legal title might be conveyed to trustees for the benefit of the wife, still the husband would be the beneficiary, taking in such case an equitable interest in virtue of his being, by the effect of the marriage, the legal embodiment and representative of the will, capacity and rights of the wife. While, on the other hand, if the gift be accompanied with such apt words, whether made in terms to trustees or to the husband, or even to the wife, it would be upheld and secured for the sole and separate use of the wife. The husband, in the two latter cases, in virtue of his same legal representative character, wherein all the legal rights and capacities of the wife are absorbed, takes and holds as trustee merely for the wife's separate use. Such being the law, long and well settled, it will be seen at once that the testimony before the court, as presented to us in the bill of exceptions, established beyond any controversy at all, that the negro in question belonged to the husband, and was not settled to the sole and separate use of the wife. The possession proven was the legal possession of the husband, because the wife had no legal capacity to take or hold possession in her own right, and the will and testament relied upon proved the negro to have been given, in legal contemplation, expressly to the husband in his own right,

as it contains no expression which, even in the most remote degree, indicated that the bequest was intended by the testator for the sole and separate use of the wife.

Therefore, as the finding and judgment of the court below in favor of the claimant was not supported by any evidence at all, and was in the face of conclusive evidence to the contrary, the court erred in overruling the motion for a new trial, and therefore the judgment below must be reversed, and the cause remanded to be proceeded in.
