was to settle the claims in as short a time as practicable, so as to enable the government to sell the public lands; which could not be done with propriety until the private claims were ascertained. As these were many in number, and for large quantities, no choice was left to the government but their speedy settlement, and severance from the public domain; such has been its anxious policy throughout, as appears from almost every law passed on the subject. In 1828 the time for filing petitions before the courts was even reduced from two years to one, and a positive bar interposed in case of failure. This policy we think Congress intended to maintain, and that the courts of Florida had no jurisdiction to receive a petition for the confirmation of an incomplete concession like the one before us, after the 26th of May, 1831.

Some stress has been placed on the language employed by this court in Delespine's case, 15 Peters, 329; and on which it is supposed the court below founded its decree on the head of jurisdiction. There an amended petition had been filed after the expiration of a year from the 26th of May, 1831, and the question was whether the defective petition, filed in time, had saved the bar, and it was held that it had: But so far from holding that no bar existed, the contrary is rather to be inferred; the direct question was neither decided or intended to be.

For the reasons stated, we order the decree of the Superior Court of East Florida to be reversed, and direct that the appellees' petition be dismissed.

LLEWELLYN PRICE, JUN., FOR THE USE OF DANIEL W. GAULLEY, PLAINTIFF IN ERROR, *v.* MARTHA A. SESSIONS.

Where a testator devised certain property to his infant daughter, to be delivered over to her when she should arrive at the age of eighteen years, and the daughter, at the age of sixteen, married the executor who had the principal management of the estate, and possession of the property devised, he must be considered as holding it as executor, and not as husband.

The executors had no power to deliver the property to the daughter, or to her guardian, or to her husband, before the happening of the contingency mentioned in the will.

The law of the state of Mississippi, providing that a wife should retain such property in her own right, notwithstanding her coverture, having gone into operation before the daughter arrived at the age of eighteen years, the distribution to her must be considered to have been made under that law.

The property, therefore, cannot be responsible for the husband's debts.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the southern district of Mississippi.

The facts were these:

In June, 1836, Russell Smith died, leaving a will, the second section

of which directed that his just debts and funeral expenses be paid, and that, for this purpose, the force be kept together on his plantation, Sylvan Vale, and prudently managed until that crop, or the subsequent one, should yield a fund to pay said debts.

The third section bequeathed to his step-son, William D. Griffin, four quarter-sections of land, and seventeen slaves; and continued as follows: "which property is to be delivered to the said William D. Griffin, by my executors, when he shall arrive at the age of twenty-one years; and should he, the said William D. Griffin, die before he arrives at the age of twenty-one years, then, and in that event, the aforesaid property, real and personal, is to be equally divided between my dear beloved brothers-in-law, E. J. Sessions, P. W. Defrance, W. Le Defrance, and Charles A. Defrance, provided they be living; if not, then it is to revert to my estate again, to be disposed of as hereinafter provided.

"4thly. I give and bequeath unto my dear beloved daughter, Martha Ann Smith, all the remaining balance of my estate, real and personal, not mentioned in my bequest to William D. Griffin, and should he and the others before-mentioned, to whom the said legacy was to descend, all be dead, she is also to inherit it; the said legacy to W. D. Griffin; but, at all events, the property is to be kept together, and the force worked on the plantation, until my said daughter, Martha Ann, arrives at the age of eighteen years, at which time my executors are to deliver over to her all of the property first set apart for her, and still retain the possession of the legacy to W. D. Griffin, and not deliver it to her, if he lives until he is twenty-one years of age; and if he dies, the mode is pointed out for them to pursue. But should my said daughter, Martha Ann, die before she arrives at the age of eighteen, or has an heir of her own body, then the legacy left her, as also that may descend to her from the first legacy, (to W. D. Griffin,) is to be disposed of as follows, to wit:" &c., &c.

He further appointed E. J. Sessions, P. W. Defrance, John Lane, and George Selser, executors; and John Lane guardian to his daughter, Martha, the defendant in error in the present suit, who was, at that time, about fourteen years of age.

On the 25th of July, 1836, the will was admitted to probate, and letters testamentary were granted to three of the executors, viz., Sessions, Lane, and Selser; and Lane was also appointed guardian to the child.

On the 8th of May, 1838, Sessions, together with Samuel Fernandis, and H. Fernandis, executed to Price, the plaintiff in error, two promissory notes; one payable eight months after the 1st of May, 1838, for $2345 11, and the other payable twelve months after the 1st of May, 1838, for $2401 16; both being negotiable and payable at the office of the Planters' Bank, Vicksburg, Mississippi.

In September, 1838, Sessions, one of the executors, married Mar-

tha, the daughter of the testator, she being, at that time, about sixteen years of age.

In August, 1839, Price, a citizen of the republic of Texas, and suing for the use of Gaulley, a citizen of the state of New York, brought suit against the three makers of the notes aforesaid, in the Circuit Court of the United States.

At November term, 1839, he obtained a judgment against the whole three, and in December following issued a *fieri facias* upon the judgment.

The property levied upon was suffered to remain in the hands of the possessors, upon their executing a forthcoming bond.

In 1839, the legislature of Mississippi passed an act, (Acts, 72,) the 22d and 23d sections of which were as follows:

"Sect. 22. Any married woman may become seised or possessed of any property, real or personal, by direct bequest, demise, gift, purchase, or distribution, in her own name, and as of her own property; provided, the same does not come from her husband after coverture.

"Sect. 23. Hereafter, when any woman, possessed of a property in slaves, shall marry, her property in such slaves, and their natural increase, shall continue to her, notwithstanding her coverture; and she shall have, hold, and possess, the same, as her separate property, exempt from any liability for the debts or contracts of the husband."

The 24th section gave to a woman who became entitled to slaves, during coverture, the same right which the preceding section gave to those women who possessed slaves at the time of marriage.

In January, 1840, Sessions and wife executed two mortgages; one to the Commercial and Railroad Bank of Vicksburg, of land and negroes, to secure $21,661 19, and the other to the Planters' Bank, of other land and negroes, secure $7121 20.

In May, 1840, the forthcoming bond, already spoken of, was forfeited, the effect of which was equivalent to a judgment against principal and sureties, for debt, interest, and costs.

On the 23d of November, 1840, the executors of Russell Smith presented their account to the Probate Court, by which it was received, examined, allowed, and ordered to be recorded; and the executors were discharged from further accounting with the court, unless thereafter cited by parties interested.

The estate was made Dr.,	$39,345 70
And allowed a credit of	13,636 12
By which it appeared the executors had overpaid	$25,709 48

In January, 1842, an alias *fieri facias* was issued against Sessions, together with the securities on the forthcoming bond, and levied upon the land and negroes which were devised to Martha by her father.

In February, 1842, Martha claimed the property as her own, and

the question was brought before the court below on the validity of said claim.

Upon the trial, the claimant then introduced John Lane, one of the executors, whose competency was objected to by the plaintiff, but was permitted to testify by the court. Said witness testified that Egbert J. Sessions, one of the defendants in the above-named *fieri facias*, had acted as executor from the time he qualified as such, in conjunction with the two other executors; that Egbert J. Sessions had taken charge of the plantation and slaves, as executor, and had since had the actual control and management thereof; that the possession of Sessions was joint with the other executors, and the control of the slaves was given to him by the other executors as a matter of convenience, as he, Sessions, lived on the adjoining plantation. The witness further testified, that the estate of Russell Smith was unsettled, and that there are now outstanding debts against the estate of Russell Smith, unpaid, amounting to upwards of twenty thousand dollars. Witness further testified, that the accounts of the affairs of the estate had been kept and rendered mostly by Egbert J. Sessions, the witness, Lane, having made but two annual settlements. Witness stated that he had rendered accounts, as guardian of claimant, Martha A. Sessions. Witness further stated, that he considered Egbert J. Sessions in the possession of the property, in the capacity of executor of Russell Smith; that the claimant and Egbert J. Sessions had intermarried in 1838; that said Sessions was now in the possession of the property since the marriage; that no formal act of delivery of the property to E. J. Sessions, by the executors, had taken place since the marriage of the claimant with said Sessions.

The plaintiff proved that claimant was now about twenty years of age, and was sixteen years of age at the time of her marriage with said Egbert J. Sessions, which was in September, 1838.

The plaintiff proved by John Lane, that he assented to the execution of the two mortgages above named, by Sessions and wife, the present claimant.

The claimant then proved, that the debts enumerated in said mortgage before referred to, was, as she believed, in renewal of debts contracted with the bank by Russell Smith, in his lifetime, the claimant's father.

Said John Lane further proved, that he was a director in one of the banks to which said mortgages are made; that he had assisted Sessions in making the arrangement with the bank, and also assented that he, Sessions, and claimant should mortgage the property to the banks.

This was all the proof in the cause; and, thereupon, the court instructed the jury, "that the property devised and bequeathed by the will of Russell Smith to the claimant, Martha A., did not vest in her, nor was she entitled to the possession of it until she, the

claimant, arrived at the age of eighteen years: and although she married the defendant in the execution before that time, the title of the property could not be vested in him until the claimant attained eighteen years of age, at which time, under the will, she became entitled to the possession of it; that the property in controversy is a chose in action, and could not vest in her husband until she or he had reduced it to possession, which could not be done, by the terms of the will, before she was eighteen years of age. If, therefore, when the act of the Mississippi legislature, securing to married women their property, free from the debts of their husbands, (which went into effect in April, 1839,) the claimant had not attained the ge of eighteen years, the husband had no legal estate in it, and it ould not be subject to this execution; and if they believe from the vidence, that the possession held by Egbert J. Sessions, one of the efendants in the execution, was held as executor up to that time ointly with the other executors, such possession vested in him no legal interest by his marriage with the claimant, either to the land or slaves, or other personal property.

"To which instructions of the court the plaintiff excepted, and rendered this his bill of exceptions at the time, before the jury retired from the bar, which he prayed might be signed, sealed, enrolled, and made a part of the record, which is done accordingly.

"J. McKinley, [seal.]"

Under these instructions the jury found a verdict for the claimant, and to review their correctness, the writ of error was brought.

Henderson, for the plaintiff in error.

Crittenden, for the defendant in error.

Henderson referred to the following assignment of errors which had been filed in the court below:

1. The court erred in instructing the jury—

"That the property devised and bequeathed by the will of Russell Smith to the claimant Martha Ann, did not vest in her until she arrived at the age of eighteen years.

2. The court erred in instructing the jury—

"That the title to the property did not vest in Egbert J. Sessions until the claimant arrived at eighteen years of age."

3. The court erred in instructing the jury—

"That the property in controversy is a chose in action, and could not vest in the husband of the claimant, until she or he had reduced it to possession.

4. The court erred in instruc the jury—

"If, when the act of the Missi ppi legislature, securing to married women their property, free from the debts of their husbands, (which went into effect in April, 1839,) the claimant had not attained the age of eighteen years, the husband had no legal estate in it, and it could not be subject to this execution."

5. The court erred in instructing the jury—

"If they believed, from the evidence, that the possession held by Egbert J. Sessions, one of the defendants in the execution, was held as executor up to that time, (when the act of the legislature of Mississippi, above referred to, was passed,) jointly with the other executors, such possession vested in him no legal interest by his marriage with the claimant, either to the land or slaves, or other personal property."

6. The court instructed the jury contrary to the law of the case.

His argument then proceeded as follows:

Notwithstanding that Russell Smith died in June, 1836, and his daughter Martha married the said Egbert in September, 1838, and the married women's act took effect on the 15th April, 1839, yet, as from the proof it is to be inferred that Martha was not eighteen years old till about June, 1840, it is assumed the legacy could not vest till the latter date, and therefore was property acquired to her after the said statute took effect, and was therefore secured to her by the 3d section of that act, which is as follows:

"That when any woman during coverture shall become entitled to, or possessed of, slaves by conveyance, gift, inheritance, distribution, or otherwise, such slaves, together with their natural increase, shall inure and belong to the wife, in like manner as is above provided as to slaves which she may possess at the time of marriage."

As to all such slaves, she is entitled, as per sect. 2, to hold them as her property; the control and usufruct, however, to belong to the husband, agreeable to laws heretofore in force.

The Superior Court of Mississippi has decided that this statutory estate of a married woman is not the sole and separate estate known to the common and chancery law: that the latter may still be created, though the statute has not created such estate, but has only secured personal property to a married woman, in the same way lands, in her own right, were secured to her at common law. 2 Smede & Marshall's Rep. 165, 570.

We maintain—

1st. That by the will of Russell Smith the legacy to his daughter Martha vested on the instant of his death, and possession only was deferred; and her marriage with Egbert J. Sessions invested him with a right of property in said legacy, subject only to like postponement of possession. 4 Hen. & Munf. 411; 4 Call's Rep. 321; 1 How. Miss. Rep. 563, 564; 3 How. Miss. Rep. 312, 395, 396; 1 Wash. Va. Rep. 30.

That to fix a husband's right of property to a legacy accruing to his wife, either before or during coverture, it is not necessary he should reduce it to possession. 3 How. Miss. Rep. 395, 396; 4 How. Miss. Rep. 214.

Especially is this true of a legacy, the possession of which is

postponed by the will, by which the husband's right to reduce to possession is delayed. 4 Hen. & Munf. 411.

2d. The court below erred in charging the jury, that "the property in controversy is a chose in action, and could not vest in her husband until he or she had reduced it to possession, which could not be done by the terms of the will until she was eighteen years," and therefore that the title could not vest in husband, &c., till after wife was eighteen.

Whatever question may be made of what constitutes a chose in action, whether it may be property out of possession, or only a right to recover money due by contract, or by tort, it is manifest, from the state of facts in this case, these slaves were not, (in relation to Egbert J. Sessions,) in any sense, a chose in action. He had the actual and controlling possession of the slaves from the time of marriage. And the right to them, which vested in him by virtue of the marriage, concurring with his actual possession, precludes the possibility that these slaves were, to him, choses in action. Himself was the executor—whom could he sue? both title and possession were his own—for what could he sue? True, he had a right to account with the probate court for his administration, but he neither could sue, nor be sued, for these slaves. See 1 How. Miss. Rep. 563, 564.

3d. The court erred, also, in instructing the jury that if Egbert J. Sessions had possession of the slaves levied, before his wife was eighteen years old, such possession could only be as executor, and could not invest him with the necessary possession to fix his marital right in the property.

If possession of a wife's legacy be postponed by the will, the husband, it is true, cannot be entitled to recover its possession; but for that same cause his marital right to the legacy shall not be prejudiced. 4 Hen. & Munf. 411; 3 How. Miss. Rep. 313; 1 Wash. Va. Rep. 30.

Now, by the laws of Mississippi, where a will does not otherwise appoint, executors and administrators are bound to pay over legacies, or make distribution, twelve months after letters granted. Rev. Co., How. & Hutch. p. 406, sects. 70, 71.

The executors had this estate in administration from testator's death, in June, 1836, till Martha Ann married E. J. Sessions, (one of the executors,) in September, 1838, two years and three months in all.

But for the provision of the will, that the slaves should be kept together till the legatee, Martha, should arrive at eighteen years of age, the law would have terminated the executor's right of possession more than a year before the marriage.

It was not, therefore, in right of their legal office of executors that the possession was then held, but by the appointment of the will only. The husband, therefore, had all the possession of this

vested legacy at the time of his marriage of which the legacy was capable; and the law required nothing more of him to perfect his title *jure mariti*. 3 How. Miss. Rep. 313.

Two months after Egbert J. Sessions' marriage this judgment was obtained against him, which, by the statute of Mississippi, binds property, personal as well as real, from its date. Rev. Co., How. & Hutch. p. 621; 6 How. Rep. 562, 567.

But if we are mistaken in all the preceding, still the charge of the court and the verdict of the jury would be wrong; because, if the title to the property was in the wife, the usufruct for life is, by the statute of 1839, reserved to the husband, and that his life-estate would be subject to execution for his debts. 6 How. Miss. Rep. 562; 2 Munf. Rep. 501; 4 How. Miss. Rep. 230; 2 How. Miss. Rep. 39.

Crittenden, for the defendant in error, insisted—

1. That the property devised was not fully vested in her till she arrived at the age of eighteen years.

2. That whatever right or interest might have been previously vested in her by the will, she had not, nor was she entitled to, seisin or possession of the land or slaves before she attained that age.

And therefore, as she did not attain it until after her marriage, and after the passage of said act, the provisions of that act apply to and protect the land and slaves devised to her from the debts of her husband and from the execution in question; and, consequently, that said verdict and judgment are correct, and ought to be affirmed.

Mr. *Crittenden* said that this case strikingly illustrated the wisdom of the law of Mississippi, which was emphatically called "a woman's law." The executor married the daughter at the age of sixteen, and the honey moon was scarcely over when an execution came to sweep away all that had been provided for her future comfort. The only inquiry is, whether the legacy was vested or not. Suppose she had died, would the husband have had it? Not so, because it was to be applied to charitable purposes. If payment was only postponed, the law would consider it as a vested legacy, but the consequences of a vested legacy do not follow here; therefore it cannot be so. The devise over shows that it was not the intention of the testator that the legacy should vest immediately, and his intention must be the guide to the construction of his will. It is true that chancery inclines to consider legacies as vested, when it is doubtful, but all agree that every thing must give way to the intention of the testator, to ascertain which is the object of all rules. In this case, the intention is clear. There is a present gift, but the legatee is not to come into possession till the age of eighteen, and in the mean time the executor is to have it, who is directed how to apply it. Again, if the legacy vested and she had died before reaching the age of eighteen, it would have gone to her personal

representatives, but the will gives it another direction. 1 Roper on Legacies, 378, *et seq.*; 3 Vesey, 236, 536; 1 Merivale, 422, 428; 8 Vesey, 547; 2 Merivale, 363, 384.

The rule is, that where interest on a legacy is given to a legatee, courts are inclined to consider it as a vested legacy, although the payment may be postponed to a future time; but here the profits were to go to the executor, and, in case of the death of the legatee, the property was to go in another direction than to her natural heirs. Was it within the protection of the law of Mississippi? The law may be inartificially drawn, but its object is apparent. When it allows a woman to acquire and hold separate property, it is equivalent to saying that it shall not be responsible for the debts of the husband. But it is said by the other side that the husband had at least an estate for life in the slaves, and that this estate was properly liable to execution for his debts. But the act says that he is to have the direction and control of them during coverture, and how can this be complied with if they are removed out of it by being sold? If this were so, the intentions of the legislature could always be defeated. There are no restrictions as to time or place, and they might be sold for twenty or thirty years if the husband continued to live so long and be removed to some distant place from which the woman, when a widow, would find it impossible to reclaim them. Was this what the legislature meant? All that they intended to provide for was that the husband should have a control over them for safe keeping. They intended to carry out their idea plainly, without reference to technical rules or contingent legacies. It has been said that the husband became vested with the property before the passage of the act; but the counsel confounds his possession as executor with that as husband. A case has been cited from Virginia, saying that where a remainder in slaves belongs to a wife, the husband has a vested right. But this is peculiar to that state and arises from her local laws. In Kentucky, slaves are real property for some purposes, and personal for others. The common law has not been the woman's friend. Society has placed her in a higher position than the law. Under a flattering pretence of unity between husband and wife, the woman has been considered as annihilated, stripped of her property, and in widowhood, allowed only a scanty pittance of the very property which she may have brought. This law of Mississippi is a wise and just law, and we hope it will receive such a construction as will carry out the benign intentions of the legislature. Sessions was not married when the debts were contracted, and no injustice is done to his creditors by refusing to apply his wife's property to the payment of these debts.

Henderson, in reply and conclusion, referred to Roper on Legacies, 403, to show that a devise over upon a contingency does not prevent a legacy from vesting. The husband here claims to

hold as executor after his functions as executor have ceased. The distinction between the choses in action and property of a wife, is clearly pointed out in 3 Howard's Miss. Rep. 395. The courts in Mississippi say that the right of the husband is perfect without reducing them into possession. How can property in possession be a chose in action? Sessions had these slaves in possession; and has them now. He undoubtedly had a life-estate in them. The case is badly brought up, because the verdict of the jury includes both land and slaves. In Mississippi property taken in execution may be replevied, but this will not apply to land. The statute only meant to put a wife's personal property in the same condition where the common law places her real estate. But the life-estate of a husband in lands may be sold. The statute gives to the husband the use and control of the wife's slaves as long as he lives, and consequently she can have no benefit from them under any construction of it.

Mr. Justice CATRON delivered the opinion of the court.

The question arising on the charge of the Circuit Court is, What interest had the husband, Sessions, in the property in controversy at the time it was levied on for his debts. If he had any subject to execution, it was acquired by the marriage with his wife as owner. Her right depended on the will of her father.

Russell Smith died in 1836, in the state of Mississippi, leaving a last will and testament, duly proved in Warren county, (27th July, 1836,) leaving E. J. Sessions, P. W. Defrance, John Lane, and George Selser his executors; and also leaving John Lane testamentary guardian to the testator's only child, Martha Ann Smith. Sessions, Lane, and Selser qualified, as executors.

The testator first provided, that his debts should be paid by the proceeds of crops from his plantation, and that the force should be kept together, until the crops paid the same, not exceeding two, however.

He next gave to his step-son, William D. Griffin, a section of land, and various slaves, to be delivered to this devisee, when he arrived at the age of twenty-one years: But should he die before, then, and in that event, the property real and personal was to be divided between E. J. Sessions, P. W. Defrance, W. Le Defrance and Charles A. Defrance, provided they should be living—if not, the property to revert to the estate to be disposed of as thereinafter provided.

2. All the remaining balance of the estate real and personal is devised to the daughter, Martha Ann Smith—and should all of the devisees mentioned in the first clause be dead before William D. Griffin attained twenty-one years of age, then the whole estate was to be inherited by said Martha Ann. "But at all events (says the will) the property is to be kept together and the force worked on

the plantation until my said daughter Martha Ann arrives at the age of eighteen years; at which time my executors are to deliver over to her all of the property first set apart for her, and still retain the possession of the legacy to W. D. Griffin, and not deliver it to her if he lives until he is twenty-one years of age." The proceeds of the crops to be vested in young slaves, in the mean time.

If the daughter should die before she arrive at the age of eighteen, or had an heir of her body, then the legacy left her, (and that left to Griffin also, if vested in her,) are directed to be disposed of otherwise—in charities, &c.

At about sixteen years of age Martha Ann married Egbert J. Sessions, one of the executors, who had the principal management of the estate, and possession of the property. For the additional facts we refer to the statement of the reporter. On this proof the court instructed the jury, "that the property devised and bequeathed by the will of Russell Smith to the claimant, Martha A., did not vest in her, nor was she entitled to the possession of it until she, the claimant, arrived at the age of eighteen years; and although she married the defendant in the execution before that time, the title of the property could not be vested in him, until the claimant attained eighteen years of age, at which time, under the will, she became entitled to the possession of it; that the property in controversy is a chose in action, and could not vest in her husband until she or he had reduced it to possession, which could not be done, by the terms of the will, before she was eighteen years of age. If, therefore, when the act of the Mississippi legislature, securing to married women their property, free from the debts of their husbands, (which went into effect in April, 1839,) the claimant had not attained the age of eighteen years, the husband had no legal estate in it, and it could not be subject to this execution; and if they believe from the evidence, that the possession held by Egbert J. Sessions, one of the defendants in the execution, was held as executor up to that time jointly with the other executors, such possession vested in him no legal interest by his marriage with the claimant, either to the land or slaves, or other personal property."

As the legacy was outstanding at the time of the marriage, the title was in the executors, subject, first, to the payment of debts; and then the claim of the devisee: but on the contingency, that until the daughter arrive at eighteen, or had an heir of her body, she should in the mean time take nothing more than a support; and this whether she married or not, for a marriage was contemplated as possible before the age of eighteen, as the becoming a mother before was provided for, so that the child might take through the mother.

We think it is free from doubt that the executors had no power to deliver possession of the property devised to the daughter before either of the contingencies above occurred; and that an attempt to do so, either to the guardian, or to the husband, would have been

void, because in violation of the manifest intention of the testator: It follows, that until the wife arrived at the age of eighteen, or had an heir of her body, the husband could only hold possession as executor. Had he died before, then we think it clear, the wife would have taken, and not the personal representative of the husband, as the executors could not assent in his behalf to the vesture of the legacy in possession. Provisions in wills, that the executors shall retain the property devised until the devisee is of lawful age, and postponements to later periods, are of common occurrence; the executors having assumed the trust, are held to its execution—on their responsibility and prudence the testator relied, and not on future husbands that young and orphan daughters might marry; nor on guardians selected by indiscreet and incompetent minors. These evils are too prominent, and have too long employed the anxious cares of prudent testators, for this court to lend its sanction in any degree to impair the guards interposed by wills, whereby the rights of possession and enjoyment are withheld from devisees. As the testator could have cut them off altogether if he would, there is no ground for complaint recognised in courts of justice: And yet less ground for complaint is there in a case like the present, where an individual creditor of the husband seeks to defeat the plain provisions of the will, by an assumption that the marital rights superseded the executorial duties, and conferred a power to deliver possession, which the will expressly prohibited.

Mrs. Sessions attained the age of eighteen in June, 1840. In April, 1839 the act of Mississippi took effect, by which it is provided—that when any woman possessed of property in slaves shall marry, her property in such slaves, and their natural increase, shall continue to her, notwithstanding her coverture; and she shall have, hold, and possess the same, as her separate property, exempt from any liability for the debts or contracts of the husband: And when any woman during coverture shall become entitled to, or possessed of, slaves by conveyance, gift, inheritance, distribution, or otherwise, such slaves shall inure and belong to the wife in like manner, as is above provided as to slaves which she may possess at the time of marriage.

As the right of distribution in this case was postponed until after the act of 1839 took effect, the wife could only take the slaves exempt from the husband's debts;—we say, could, because it does not appear that the executors of Russell Smith have assented to the legacy and delivered possession to the legatee, Martha Ann.

Without saying more, we are of opinion the charge of the Circuit Court to the jury was proper, and that the judgment must be affirmed.