TEMPLE v. NICHOLSON, ET AL.

Bill of sale—License to grantee to take possession—Progeny—Trover.

Trover. The declaration charged the appellant with the wrongful conversion of a horse and colt, the property of the respondents. The defendant pleaded, *inter alia*, that the colt was the property of one Thomas Hackett, and the defendant, as Sheriff of York, took the same under an execution against Hackett. The plaintiffs claimed the property was vested in them by a mortgage bill of sale, and given to them by Hackett as collateral security with other mortgages which they had on his real estate. The colt was the progeny of a mare which was mentioned in the bill of sale, and which always remained in the possession of Hackett. In the mortgage there was a proviso that until default the said Thomas Hackett might remain in possession of all the property mortgaged or intended so to be; but with ful power to the plaintiffs, in default of payment, to take possession and dispose of the property as they would seem fit. At the time this colt was foaled it was proved that there had been default in payment of both principal and interest money secured by the chattel mortgage.

Held, that the plaintiffs, being under the bill of sale the absolute owners of the mare, and after default entitled to take possession of her, and the foal having been dropped while plaintiffs were such owners and entitled to the possession of the mare, the colt was their property,—"*Partus sequitur ventrem.*"

Gregory, for appellant.

Wetmore, Q. C., for respondents.

ALMON v. LEWIS.

Will—Annuities—Sale of corpus to pay.

Bill by the executors and trustees under the will of John Robertson, deceased, to obtain the direction of the Court as to the rights of the several persons interested under the will.

John Robertson died on the 5th August, 1876, leaving a will dated 6th August, 1875, and a codicil dated 21 July, 1876. By the will he devised to his widow an annuity of $10,000 for her life, which he declared to be in lieu of her dower. This annnity the testator directed should be chargeable on his general estate. The testator then devised and bequeathed to the executors and trustees of his will certain real and personal property particularly described in five schedules, marked respectively, A. B. C. D. E., annexed to his will upon the trust, viz.: "Upon trust during the life of his wife to collect and receive the rents, issues, and profits thereof which should be and be taken to form a portion of his 'general estate;' and then from out of the general estate during the life of the testator's wife the executors are to pay to each of his five daughters the clear yearly sum of $1,600, by equal quarterly payments, free from the debts, control, and engagement of their respective husbands." Next reserving the statement of of the trusts of the scheduled property specifically given, the testator provides that from and after the death of his wife the trustees are to collect and receive the rents, issues, dividends, and profits of the lands, etc., mentioned in the said schedules, and to pay to his daughter Mary Allen Almon the rents, etc., appointed to her in schedule "A;" to his daughter Eliza, of those mentioned in schedule "B;" to his daughter Margaret, of those mentioned in schedule "C;" to his daughter Agnes, of those mentioned in schedule "D;" and to his daughter Laura, of those mentioned in schedule "E;" each of (his) said daughters being charged with insurance, ground rents, rates and taxes, repairs and other expenses with or incidental to the management and upholding of the property apportioned to her, and the same being from time to time deducted from such quarterly payments." The will then directed the executors to keep the properties insured against loss by fire, and in case of total loss it should be optional with the parties to whom the property was apportioned by the schedules, either to direct the insurance money to be applied in rebuilding, or to lease the property. It then declared what was to be done with the share of each of his daughters in case of her death. In the residuary clause of the will there were the following words:—"The rest, residence and remainder of my said estate both real and personal and whatsoever and wheresoever situated," I give, devise and bequeath the same to my said executors and trustees upon the trusts and for the interests and purposes following: He then gives out of