

part of Hays' estate, there would be more than sufficient to pay all his debts, and the expenses of administration ; and prayed that such a decree might pass, and, that she might be permitted to receive a third of the residue.

The answer of Charlotte Henry, stated, that the property had been bought with her money ; and, denied that the deceased had exercised such acts of ownership over it, as were inconsistent with the nature of the trust ; and further denied the complainant's right to bring her title in question, in the manner attempted. A commission to take testimony was subsequently issued and returned, the nature and effect of the evidence taken under which, will appear from the Chancellor's opinion :]

THE CHANCELLOR :

It has been conceded in this case, and certainly it could not be disputed, since the decisions in *Griffith vs. Griffith, Ex'rs.*, 4 *Harr. & McHenry*, 101 ; and *Coomes vs. Clements, 4th Harr. & Johns.*, 480, that it is not in the power of a husband in Maryland, by will to deprive his widow of that portion of his personal estate to which she is entitled by law ; the amount of the share depending upon circumstances, being one-third or one-half, according to those circumstances. This has been the settled and unquestionable law in this state, since the decision of the cases referred to.

But, although the husband is not permitted to deprive his wife of her reasonable share of his personal estate by will, there can be no doubt of his power to dispose absolutely of this description of property during his life, independently of the concurrence, and exonerated from any claim of the wife, provided the transaction is not merely colorable, and be unattended with circumstances indicative of fraud upon the rights of the wife. If the disposition by the husband be *bona fide*, and no right is reserved to him, then, though made to defeat the claim of the wife, it will be good against her, because, as was observed in the argument, an act cannot be denounced as fraudulent which the law authorizes to be done.