

[On the 22d May, 1830, the late Honorable John Buchanan, of Washington county, being indebted to Casper Mantz, in the sum of ten thousand dollars, in order to secure its payment, with interest, in two years, executed to him a mortgage of the farm on which he then resided; and his wife united in the acknowledgment of the deed, for the purpose of relinquishing her dower. Mantz died in the year 1839, and on the 17th January, 1844, a bill was filed in this court by his administrators, c. t. a., for a sale of the mortgaged premises. A decree was accordingly passed on the 27th February, 1844; and the said Buchanan died in October of the same year, intestate, leaving said mortgage debt still unpaid. In January, 1846, no sale having yet been made under the decree, a bill was filed by George M. Eichelberger, who held as trustee certain judgments against the mortgagor, on behalf of himself and of the other creditors of the mortgagor, against his heirs at law, and the complainants in the first bill; reciting the previous proceedings alleging the sufficiency of the personal estate, and the continuance of the mortgage debt, with interest; and praying that the trustee appointed by the former decree, might proceed to make sale of the mortgaged premises, for the benefit of the creditors of the deceased mortgagor. A decree was passed as prayed, and the property was sold on the 29th of December, 1846. In the month of September of the following year, an order was passed on the petition of Maria S. Buchanan, widow of the deceased mortgagor, allowing her a proportion of the whole of the net proceeds of sale; the residue thereof, after payment of the mortgage debt, appearing amply sufficient for that purpose. But on a petition of Eichelberger in the behalf of creditors, stating that dower in said lands had already been assigned to her by the Washington County Court, sitting as a court of equity, that order was rescinded, and a day fixed for hearing the matters of the two petitions.

The first question presented to the court, for decision, was, whether Mrs. Buchanan was precluded from claiming any share of proceeds of the sale by the proceedings in Washington County Court.