

mount to the title of the widow ; and until that trust was fulfilled, her right was in suspense ; and hence she cannot have rents and profits from his death. Dower could not have been assigned to her at that time, nor can she have rents and profits, the incidents to the dower.

It is true, as has been urged, that it was the business of the surviving partners to pay the debts, and wind up the concern ; but if they failed to do so, the complainant had it in her power to stimulate them by a bill in this court : and a bill was accordingly filed by her for that purpose. But an examination of the proceedings will show that the long delay which has taken place, and the slow progress of the cause, is chargeable, perhaps, in a greater degree to the complainants than the defendants.

My opinion therefore is, that the complainant can only have an equivalent in money, payable out of the proceeds of sales, according to her age, and the state of her health at the period of the death of her husband, with interest thereon from the mean day of sale ; but that she is not entitled to arrears of dower, or interest in lieu thereof, from his death until that day. And I am also of opinion, that the widow is entitled to receive this sum in preference of the creditors of the new partnership, becoming such since the death of her husband.

With regard to the bonds and mortgage to William Seal, I think the principal sums should be paid out of the personal estate of the mortgagor, in the hands of his administratrix, and if that is not adequate for their payment, then the balance should be paid out of the proceeds of that portion of the real estate contained in the mortgage.

The complainants claim in their bill, that the defendants shall be compelled to pay this claim from that portion of the concern which was originally bought of Seal, which was a clear recognition of its validity ; but the rule being, that as between the heir and the executor, the personal estate shall exonerate the real—being the primary fund for the payment of the mortgage—the heir in equity shall have the preference, and may insist upon such application of the personal estate. 2 *Powell*, 777, 780.