

amount of the provision beyond her dower interest in that particular piece of property, must be regarded as a volunteer, and her claim for such excess, subordinate to the claim of the creditor.

The bill in this case, therefore, will be dismissed.

CORNELIUS McLEAN for Complainants.

A. RANDALL and JAMES MURRAY for Defendants.

[This decree was affirmed on appeal.]

RICHARD W. GILL, TRUSTEE, ET AL. }

vs.

WILLIAM B. McATTEE ET AL. }

JULY TERM, 1851.

[EQUITABLE LIEN ON LANDS—SECRET EQUITIES—SPECIFIC PERFORMANCE OF CONTRACT FOR MORTGAGE.]

S., A TRUSTEE under a decree of the Court of Chancery, to invest certain trust moneys, agreed with D., the surety in his trustee's bond, to lend him \$12,000 of the trust funds, to be secured by a mortgage upon D's lands; and some time in the year 1845 advanced \$6000, part of the said \$12,000, to D., and agreed to apply the other \$6000 to the payment of a judgment against D. Afterwards, in the same year, D. executed a mortgage upon the lands now held by the defendant, to secure the payment of the said \$12,000. S. failed to pay the judgment, and the mortgage was never recorded nor reported to the Chancellor for his approval; but was, subsequently, about the 1st of January, 1846, returned by S. to D., and by him destroyed. S. at or before this time, had received large sums of the trust money, which he failed to invest, and was subsequently removed from his office, and a new trustee appointed in his place. The lands were sold at sheriff's sale, and purchased by the defendant for \$500, subject to prior judgment liens amounting to nearly their full value. The complainants, the *cestui que trusts* of the fund, then filed their bill, claiming an equitable lien upon these lands in the hands of the purchaser, by reason of the above agreement between S. and D. **HELD—** That it is very clear the complainants cannot have relief, unless they can show themselves entitled to an equitable lien upon these lands, which, upon principles of equity, they may set up and maintain against the purchaser; and, that to do this, they must make out, by satisfactory proofs, a certain, distinct and consummated contract between S. and D., for such a lien.