

C H A P.  
XXXIX.

whether she  
will accept  
the Devise or  
her Dower?  
Or shall be  
concluded by  
the Devise,  
and barred  
of her Dower.

of which she is endowable? And if she accept of her Devise, she shall be forever debarred of her Dower out of the rest of the Testator's Real Estate aforesaid; and if she accepts of her Dower, then such Acceptance shall be adjudged a full Recompence of her Devise aforesaid. But in case she shall neglect to make such Election within the Time aforesaid, she shall then, by such Neglect, be concluded by what is devised to her, and shall be thereby barred of her Dower of such Deceased's Real Estate, unless it shall appear to be the Design of the Devisor, that such Widow shall have both Devise and Dower; any Law, Statute, Usage or Custom, to the contrary notwithstanding.

Marriage Settlement shall bar Dower, but not Devises.

XXXVII. **Provided** always, That if any married Woman shall have any Estate settled upon her, by Jointure or other Settlement, before Marriage, such Jointure or Settlement shall bar her of her Dower of her Husband's Lands; yet it shall be lawful for her to accept what her Husband shall by his Last Will and Testament devise her.

To prevent Prejudice to Orphans Estates by second Marriages.

XXXVIII. **And whereas** many Orphans have greatly suffered by the second Marriages of such Widows, who having Estates in Possession by Will, or Right of Administration, either by such Widows while Sole, or their Husbands during the Coverture, the same have been wasted and embezzled; and if the Woman die, the said Husband refuses to render an Account of such Estate, alledging that he is neither Executor nor Administrator to his Wife, nor of her former Husband; whereas, at Common Law, a Woman Couvert Executrix can do no Act to prejudice her Husband, all such Acts, during the same, being void without his Consent; he, not preventing such Waste, when in his Power, ought to answer for the same; **Be it therefore Enacted**, by the Authority aforesaid, by and with the Advice and Consent aforesaid, That for every such Waste by such second Husband, during the Coverture, such Husband shall account for the same, and be liable to be sued, together with his Wife if living, or by himself if she be dead, (as well as the Security) for the said Estate due to such Orphan, by such Orphan if at Age, if under Age, by his Guardian; and also for all Waste committed by his Wife before Marriage, or by himself afterwards.

The second Husband shall be liable to Suit for the Orphans Estates, and for all Waste committed by the Wives or themselves.

For the better Security of Estates belonging to Orphans of Testators;

XXXIX. **And whereas**, Orphans of Persons dying Intestate, by the good Provision of this Law, in committing them to the Care of the County Court, to inspect the good Condition of their Securities and good Usage as aforesaid, are by Experience found to be in better Condition, in Respect of both, than the Orphans of Testators, whose Executors hitherto have rarely given any Security, and that the Security they have given, many Times proves insolvent; **Be it therefore Enacted**, by the Authority aforesaid, by and with the Advice and Consent aforesaid, That the Judge for Probate of Wills, shall hereafter take good and sufficient Security of all Executors and Administrators, to the Use of any Orphan or Orphans in any Will mentioned, and not solely to their own Use, for the true Performance of such Last Will and Testament according to Law, and the Intent of the Testator; and shall transmit an Account of the Legacies, left to any Infant Orphans, to the County Courts, to be by them secured in the same Manner as the Balances of Intestates Estates, so far as shall be consonant to the Will of the Testator. And the Justices of the several County Courts shall, at the same Time that they inquire by a Jury of the good Usage and Condition of the Securities of other Orphans, also enquire of these: And if they find the Security like to be insolvent, or the Orphans ill used, that then it shall and may be lawful for such Justices, to act therein as they are by this Law directed, in the Case of Intestates Estates: **Always Provided**, That nothing shall be done, by virtue of this Act, which shall seem repugnant or contradictory to the Last Will or Testament of any Person deceased.

The Commissary shall take Security of the Executors, &c. and transmit an Account of Legacies to the County Court, to be there secured, &c.

But nothing shall be done herein repugnant to the Testator's Will.

The Prerogative Court invested with

XL. **And** for the more speedy Administration of Justice to Orphans, Legatees and Others, in the Prerogative Court for Probate of Wills, and granting