

election in general, and cannot be remitted to her original rights, if she forfeit the estate by breach of a condition in the devise to her. It appears from Vernon's case *supra*, that such a condition would not avoid a jointure made after marriage if accepted by the wife. But it seems from *McCartee v. Teller supra*, and 4 Kent Comm. 55, 56, to the same effect, that a conveyance to the wife before marriage to continue during widowhood, or if made to depend on any other condition, will not be a good *legal* jointure, however an adult widow might be bound in equity by entry and acceptance of such a **309** qualified freehold. An acceptance of a *devise has been held to bar the widow's dower in subsequently acquired property, *Durham v. Rhodes*, 25 Md. 233.

Widow a purchaser for fair consideration.—The widow becomes by the Act a purchaser for a fair consideration when she accepts a devise in lieu of dower. But this has been construed to extend only to the amount of her common law rights, and as to any excess in value of the devise to her above that she is considered only as a volunteer, where the excessive devise would be injurious to the creditors of the testator, *Gibson v. McCormick*, 10 G. & J. 67; *Snively v. Bevans*, 1 Md. 223; *Margaret Hall's case*, 1 Bl. 203; *Mantz v. Buchanan*, 2 Md. Ch. Dec. 202; *Thomas v. Wood*, *ibid*, 296.²⁷ To this extent, however, her claim is a lien to be satisfied in preference to creditors, *Margaret Hall's case*; *Durham v. Rhodes supra*; and it must be averred, or at least proven, that the devise to her is excessive and therefore fraudulent as to creditors, *Gibson v. McCormick*; *Mayo v. Bland supra*. The devise or bequest to her may be specific, or residuary, or a general or pecuniary legacy; and, if an annuity, is not necessarily a charge upon the testator's real estate, *Power v. Jenkins*, 13 Md. 443. But to the extent of her legal share in personalty, one-third of the excess of the assets over debts belongs to her absolutely as purchaser, and therefore, where she, as specific legatee, is called on for contribution, such one-third must be deducted from the amount of her specific legacies, and the residue held liable only to contribution, *Dugan v. Hollins*, 11 Md. 41. The English rule is that a legacy given by a testator to his widow as the price of her release of dower must be fully paid before any mere legatees can claim, *Burridge v. Bradyll*, 1 P. Wms. 127; *Davenhill v. Fletcher*, *Ambl.* 245; *Blower v. Morret*, 2 Ves. 420; *Heath v. Dendy*, 1 Russ. 545, and so is the rule here, and assets will be marshalled for her, *Durham v. Rhodes supra*.²⁸ But if she be only a

²⁷ So where the husband in his life transfers property to his wife and in his will states it is in lieu of dower, she holds the same as a meritorious purchaser for a valuable consideration, and whether the amount thus given is reasonable or not is a question which only a creditor can raise. *Duttera v. Babylon*, 83 Md. 536. Cf. *Addison v. Addison*, 44 Md. 182; *Reiff v. Horst*, 55 Md. 42; *Kuykendall v. Devecmon*, 78 Md. 537.

²⁸ *In re Greenwood*, (1892) 2 Ch. 295; *Roper v. Roper*, 3 Ch. D. 714.

A general legacy to a widow "in lieu of her dower" and of "all her rights as a widow" in her husband's estate makes her in equity a creditor to that extent; and where real and personal estate have been specifically bequeathed, they must contribute *pro rata* according to their respective values to the payment of the legacy to the widow. *Addison v. Addison*, 44 Md. 182.