

general legatee, any excess of such bequest over her legal share will be liable to the claims of creditors before specific legacies bequeathed by the will can be resorted to, *Mayo v. Bland supra*. It results too from the same principle, according to Chancellor Johnson in *Thomas v. Wood supra*, although somewhat inconsistently with the reasoning of *Collins v. Carman*, and *Chew v. Farmers Bank*, 9 Gill, 361, that where there is a partial failure of a devise to the widow to such an extent as to make what she receives under the will less in value than her legal share, she will be entitled to compensation out of the residue of the estate. In the latter case it was held, that the widow may become entitled to dower after having accepted a devise in lieu of dower, provided nothing passes by the devise, but in such case there must be clear proof that the provision made for her is of no value; for she is presumed to have made due inquiry in the first place, and see *Collins v. Carman*. In *Durham v. Rhodes supra*, where a testator devised all his lands to his widow, and made her executrix, and she accepted the devise, and paid a balance of purchase-money of lands subsequently acquired and thus diminished the devise to her in lieu of dower, it was held that she or her representatives might be subrogated to the rights of the vendor.

Eviction of widow.—If the widow be evicted of the whole or any part of a legal jointure by a superior title, whether the jointure were made before or after marriage, or whether the eviction were during coverture or afterwards, or although she accepted after her husband's death a part not evicted, she is entitled to be endowed of so much of the residue of the husband's real estate as the land of which she is evicted amounts to, *Gerveyse's case*, Moor. 717; *Beard v. Nutthal*, 1 Vern. 427. If the value of her dower be greater than the jointure, she recovers only the amount of the latter, *Corbet v. Corbet*, 1 Sim. & Stu. 612, affd. 5 Russ. 254. If on the other hand, the value of the jointure exceed the dower, she cannot by the Statute recover beyond the value of the dower, but the deficiency may in some cases be made up to her, see *Beard v. Nutthal supra*, and **Tew* **310** v. *Winterton*, 3 Bro. C. C. 489. And it was held in *Vernon's case*, that she can hold the lands recovered only during life, though her jointure were in fee simple or fee tail.

At law, the widow's right being revived on eviction she may enforce it against a purchaser, if the husband have in the meantime parted with his other lands, *Maunfield's case*, Co. Litt. 33 a. n. 8. Lord Hardwicke in *Drury v. Drury*, 2 Eden, 68, observed that if a husband marrying an infant had covenanted for the payment of an annuity by way of jointure, and had dissipated his property, this would be an eviction in equity and would entitle the widow to dower as at law. And so it has been said that if an annuity were settled by way of jointure on an infant in the names of trustees, and the funds were wasted by the trustees, this would amount to an eviction, and the widow would not be restrained from proceeding for her dower, 2 Sugd. V. & P. 220, 10th ed. In *Tew v. Winterton*, a husband had given a bond to secure an annuity to his wife, which by a memorandum thereon she accepted in lieu of dower and the Court on the husband's death decreed the payment of the annuity out of his assets, and if they were not sufficient, out of certain estates of which he was tenant in tail. But this case seems to have been overruled by *Simpson v. Gutteridge*, 1 Mad.