

to her a large portion of his estate, to hold a part during her life, \*and another part for a term of years; that she had elected to take under the will of her husband, immediately after **204** his death, when she was unacquainted with his affairs; but that it is now ascertained, that the claims against his estate will absorb so much of it, as, if paid to her exclusion, will deprive her of all benefit intended by the will; and leave her in a much worse situation than if she had rested altogether upon her common law rights.

And, therefore, as her election was improvidently made, and at a time when she was destitute of the information which alone could enable her to act knowingly upon the subject, she prays that it may be annulled, that she may be allowed the value of her dower, or be relieved according to the nature of her case, &c.

BLAND, C., 5th March, 1827.—This case having been submitted on the application and petition of Margaret Hall, the proceedings were read and considered.

The will of the deceased husband of this widow lay before her, and presented to her a choice between the estate therein bestowed, and that given by the law. In her election to take under the will, there is no apparent room even to suspect fraud, nor has the existence of any been intimated, and it is difficult to perceive how there could have been any mistake. But, supposing it possible to show that a mistake occurred, I should require from her a strong and clear case of misapprehension. She has heretofore formally made her election in the manner prescribed by law, and has solemnly re-affirmed that choice by bringing this suit. An election thus deliberately made, repeated and adhered to, ought not to be lightly shaken or easily annulled. This widow must, therefore, be held firmly bound by her election; and can have no relief, but such as may be altogether compatible with the choice she has thus made. *Butricke v. Broadhurst*, 1 *Ves. Jun.* 171; *S. C.* 3 *Bro. C. C.* 88; *Wake v. Wake*, 1 *Ves. Jun.* 335.

A devise, which is merely of the nature of a donation, or that appoints persons to take as heirs in place of those designated by the law, must certainly be considered as void against creditors. But a devise in lieu of dower, is one of a different character, and of much higher merits. It discharges a highly favored debt due from the testator; it relieves his real estate from a lien imposed by the law in favor of his wife, in preference to all others, with which he himself could have encumbered it, by any contract of his own. In the language of the Act of Assembly, a widow electing to take \*under the will of her husband, is to "be considered as a purchaser with a fair consideration." 1798, ch. 101, sub-ch. **205** 13, s. 5; *Sug. V. & P.* 257. It is clear, therefore, that this devise is fraudulent, as against creditors, only so far as it exceeds the