

Nicholas Welch died intestate, leaving the defendants his heirs, and a widow, the defendant Rachel, who had since intermarried with Warner Welch; that administration had been granted to the widow and Joshua Warfield of the personal estate which was wholly insufficient to pay the debts of the deceased; and that the land was bound by a lien to the plaintiff for the payment of the balance of the purchase money.—Upon which it was prayed that the land might be sold to satisfy the said claim.

As against the widow and her husband, who having been summoned, had failed to answer, an interlocutory decree was passed taking the bill *pro confesso*. The infant heirs, answering by their guardian *ad litem*, admitted the truth of the allegations of the bill. And the administrator, in his answer, also admitted the truth of the plaintiff's statement; and prayed that the balance which might remain should be paid to him to be applied, by him, under the directions of the Orphans' Court, to the payments of such debts as might be then due from Nicholas Welch, deceased, in consequence of the insufficiency of his personal estate. Upon this case, on the 14th of July, 1826, a decree was passed, in the usual form, directing the land to be sold; under which it was sold accordingly, and the sale finally ratified on the 19th of February, 1827.

The widow, with her second husband, by petition, prayed to be allowed a portion of the proceeds of the sale in lieu of the dower to which she was entitled in the land sold. The plaintiff objected, that the claim was to his prejudice; and therefore should not be allowed.

*BLAND, C., 3d June, 1828.—The petition of Warner Welch and Rachel his wife having been submitted without **244** argument, the proceedings were read and considered.

The object of the bill is to have the land sold for the payment of the purchase money due to the plaintiff; his claim therefore carries with it an equitable lien upon the land sold, which entitles him to a preference in satisfaction from the proceeds of the sale over all others; and consequently, the petitioner Rachel, according to the Act of Assembly, 1818, ch. 193, s. 10, can only be endowed of the equitable interest of her late husband, without prejudice to the plaintiff's claim; that is, of the surplus which may remain after that claim has been satisfied. But as it does not appear what is the amount of the surplus, if any;

It is therefore ordered, that this case be and the same is hereby referred to the auditor with directions to state an account accordingly, allowing to the said Rachel out of such surplus, if any, two-thirteenths for and in lieu of her dower in the equitable interest held by her late husband in the lands in the proceedings mentioned.