

creditors of the deceased to file the vouchers of their claims within four months from the day of sale.

After which, Elizabeth R. Worthington, by her petition, stated, that she was the widow of the late Beale M. Worthington, and as such, was entitled to dower in the real estate, of which he died
512 * seized, and which had been decreed to be sold. Whereupon she prayed, that a commission might be issued, to assign dower to her. And recommended Thomas H. Dorsey, James Wells, Eli Lusby, Jacob Waters, and Caleb Dorsey, to be appointed commissioners for that purpose.

BLAND, C., 2d July, 1828.—The bill states, that Beale M. Worthington, the deceased, left a widow, Elizabeth R. Worthington, and the infant children, these defendants, his heirs; and then prays, that the real estate of the deceased may be sold for the payment of his debts. Hence, taking this petitioner to be the widow mentioned in the bill, it virtually recognizes her legal right to dower; and, therefore, there need be no hesitation in at once, according to the established course of the Court in similar cases, either granting a commission to have dower assigned to her, or in directing the land to be sold subject to her claim; or in awarding to her a proportion of the purchase money in lieu thereof. But, as in this case, the widow is not a party to the suit; and the defendants are infants; it may not be amiss to allow the plaintiffs to show cause, if any they have, why a commission should not issue as prayed, leaving the application open to any further objections when the Court shall, upon the return of the commissioners, be called on for a decree confirming the assignment of dower so made to her. *Mildred v. Neill, ante, 354; Ewing v. Ennals, ante, 356.*

Ordered, that a commission issue as prayed, to the persons recommended; unless cause to the contrary be shewn on the 16th instant; provided, that a copy of this order, together with a copy of the foregoing petition and recommendation be served on the plaintiffs or their solicitor, on or before the 9th instant.

The plaintiffs consented that a commission should issue as prayed, which was issued accordingly. Upon which, the commissioners made return, that they had assigned to the widow her dower, according to certain metes and bounds as therein specified, and as shewn by the annexed plot thereof. (e)

(e) It appears from the auditor's report, subsequently made and passed upon in this case, that the expenses of the survey for making the assignment of dower, were allowed out of the proceeds of the sale; but no decree confirming to the widow her dower, was ever called for or passed.