

Where one creditor may, to obtain satisfaction, have recourse to two funds, and another creditor of the same debtor can only resort to one of them; he who has it in his power to resort to the two funds may be compelled to obtain satisfaction, as far as he can, out of that fund upon which the other creditors can have no claim,

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lent in value to her legal right; and by her acceptance of it, as such, it must be presumed, that she has hitherto so regarded it. No one of these parties has objected to the having of it, or of her dower awarded to her, in kind, or in any other form. This devise to her, in lieu of dower, is one of singular complexity, and difficult to be disposed of, with a due regard to the interests of the devisees, and the creditors of the deceased. For, as regards the mortgaged estate, there being no personal covenant in the mortgage deed for the payment of the money, it follows, that in so far as this incumbrance in lieu of dower should be thrown upon it, so as to leave any balance unsatisfied, the claim for such balance would be thereby reduced to the grade of a mere simple contract debt, so as in that, and in other respects, to be regarded as a devise to the prejudice, and in fraud of creditors, and void under the statute.

Therefore such a decree, as may be deemed safe as to the widow, and most beneficial to all others, may be now made, as is usual in similar cases, directing the real estate to be sold, disregarding this devise to the widow, and leaving her to come in, according to the rule of the Court, for a proportion of the proceeds of the sale in lieu of her dower at the common law, to which she and all concerned have thus tacitly admitted she may safely be remitted in place of the devise.—*Maccubbin v. Cromwell*, 2 H. & G. 444; *Margaret Hall's Case*, 1 Bland, 203.

The claim of the complainant being established to the satisfaction of the Chancellor, except as against the defendants James Tilton and Clara Tilton, to the extent of whose interests it is barred by the Act of Limitations; and, it appearing that the personal estate of the said Jacob Gibson, deceased, is not sufficient for the payment of his debts. Decreed, that the bill of complaint be taken *pro confesso* against the absent defendants, &c. and against the defendants Nancy Gibson, &c. Decreed, that the real estate of the said Jacob Gibson, deceased, or so much thereof as may be necessary, be sold for the payment of the mortgage claim of the defendants, the Farmers Bank, and the claim of the complainant as stated in the proceedings, and all other debts due from the said Jacob Gibson, deceased; that John Scott be appointed trustee to make the said sale, &c. (in the usual form.) And at the time of advertising said sale the trustee shall give notice to the creditors of the said Jacob Gibson, deceased, to file their claims with the proper vouchers in the Chancery office within four months from the day of sale. Decreed, in conformity with the decree of the Court of Appeals, that the answer of the defendant James Tilton; and, according to the principles of the same decree, the answer of the defendant Clara Tilton, be, and they are hereby declared to operate as protections to the interests of the said defendants in the real estate aforesaid, as against the complainant. And in taking the account of the claim of the complainant the auditor is directed to treat it as having been paid in proportion to the extent of the interests of the defendants James Tilton and Clara Tilton; to which extent they would have been required to contribute towards the payment thereof in respect of the interests acquired by them under the will of the said Jacob Gibson, deceased, if the aforesaid answers had not been filed. And the parties are hereby authorized to take testimony in relation to the said proportional deduction from the said plaintiff's claim, before any Justice of the Peace, on giving three