

CAROLINE C. PURDY
 vs.
 THOMAS PURDY ET AL. } DECEMBER TERM, 1850.

[DOWER—RESULTING TRUST—JOINT TENANCY.]

A WIDOW is not entitled to dower in an equitable estate held by the husband during coverture, unless he also *dies* the owner of such estate, and if he parts with it during marriage, though without the concurrence of the wife, she will be deprived of her dower.

Land was purchased by four brothers, and the title conveyed to but two of them, who, on the same day, mortgaged it to the Bank for money loaned for the payment of the purchase-money. The two to whom the title was not conveyed, paid their share of the debt to the Bank, but there was still a balance due on account of the whole debt, and the Bank still held the mortgage, when one of said two died. HELD—

That his widow was not entitled to dower.

If an estate is purchased in the name of one, and the consideration-money is actually paid at the time by another, there is a resulting trust in favor of the party paying, provided the payment of the money be clearly proved.

If only a part of the purchase-money is paid by a third party, there will be a resulting trust in his favor *pro tanto*, and the same doctrine applies to a joint purchase.

But it is indispensable to the creation of such a trust, that the money should be paid *at the time* of the purchase.

It is not sufficient that the words employed would, but for the Act of 1822, ch. 162, be construed to create a joint-tenancy, to create such an estate, unless the instrument *expressly provides* that the land shall be held in joint-tenancy.

[The facts of the case are sufficiently stated in the Chancellor's opinion.]

THE CHANCELLOR :

The question involved in this case has twice engaged the attention of the Court of Appeals, and upon each of these occasions, the widows claiming dower in lands which had been held by equitable titles in their husbands, were defeated.

In the first case, which was that of *Hopkins et al. vs. Frey*, 2 *Gill*, 359, the husband executed a mortgage of the land