

WARING v. WARING.

This court may appoint a guardian for a female infant above eighteen and under twenty-one years of age.—A sale of the realty to save the personalty can only be made at the instance of one who has an interest in both estates; and without prejudice to creditors.—A widow may have dower out of the real estate so sold; but not a distributive share also of the personalty so saved.—A suit for the sale of the realty to save the personalty must be treated as a creditor's suit.

THIS bill was filed on the 20th of September, 1830, by *John Waring*, against *Henrietta M. Waring*, *Catherine H. Waring*, *Susan Waring*, *Grace Waring*, *Eleanor Waring*, *Eliza Waring*, *Richard M. Waring*, *Sally Waring*, and *Sarah C. Waring*. The bill states, that the plaintiff's father *Henry Waring*, died seized and possessed of a large real and personal estate, and indebted to an amount equal to the whole value of his personal property, leaving a widow, the defendant *Sarah C. Waring*, and the other parties his children and heirs at law; that the defendants *Susan* and *Grace*, were between eighteen and twenty-one years of age; and that the defendants *Eleanor*, *Eliza*, *Richard*, and *Sally*, were minors under the age of eighteen years, for whom their mother, the defendant *Sarah C. Waring*, had been appointed by the Orphans Court, and then was their actual guardian. That the late *Henry Waring* died seized of a tract of land called *Mount Pleasant*, containing about six hundred acres, and a tract called *The Wedge*, containing about three hundred acres, lying in Prince George's county; and a tract of land called *Schekles Chain*, and *Lot No. 57*, lying in Anne Arundel county, containing about two hundred acres. That a large proportion of the personal property of the deceased had been sold for the payment of his debts; and that if any more of it, especially negroes, should be sold, there would not be enough left for the purpose of carrying on and working to advantage the real estate which had been left to descend to the children and heirs at law of the deceased. Whereupon the bill prayed, that the lands in Anne Arundel might be sold and the proceeds applied to the payment of the debts of the deceased.

The plaintiff by his petition, without oath, stated, that the defendants *Susan* and *Grace Waring* being infants, between the ages of eighteen and twenty-one years, could not have an actual guardian appointed for them by the Orphans Court. Whereupon he prayed that a guardian might be appointed for them by this court.

22d September, 1830.—BLAND, Chancellor.—Upon a careful