

In this, as well as in all other proceedings which may be brought before the court, in relation to the right of property, it will be proper, however, constantly to bear in mind, that there are certain constitutional limitations, beyond which, the power of the legislative or judicial department cannot be in any manner extended. Neither the legislature nor the court can take property from one citizen and give it to another; and therefore, no part of this real estate can be sold, and taken from these heirs and applied to the benefit of any one, other than these heirs, to the extent of their interest in the personalty, and as the means of saving it. Because the application of the proceeds of the sale of the realty, which belongs to them, to save any personal property from the claims of creditors, which would not, when so saved, belong to them, would be, in effect, to take their property to save the property of others; which cannot be done in any way, or under any form of proceeding whatever. In this instance, the intestate having left children, the widow would be entitled to only one-third of his personal estate *left after the payment of all his debts*; and consequently, in so far as the real estate which has descended to these heirs, may be applied to pay those debts, in order to save the personalty, these heirs do, in fact, thereby become the purchasers of it, as against all but creditors; and the widow can have no claim to any part of it; since the awarding to her any portion of the personalty so saved, would be, in effect, to take the property of the heirs and to give it to her; which cannot be done. She is, however, justly entitled to dower out of the real estate sold; or to an equivalent allowance from the proceeds of the sale; recollecting always, that by coming in, and making claim to an equivalent allowance out of the proceeds of sale, she thereby, tacitly admits the truth of the allegations of the bill; and therefore, must, on that ground also, be precluded from any portion of the personalty thus saved by the proceeds of the sale of the realty.

But the legislature is, by a positive constitutional provision, restrained from passing any law impairing the obligation of contracts; and it is believed, that no court of justice has hitherto ventured to impair the obligation of a contract, or to throw any impediment in the way of a creditor who asked to have his claim enforced against his debtor. This act of assembly must therefore, be so construed, and the authority which has been conferred by it, upon this court, in cases of this kind, must be so applied, as to leave to the creditors of this deceased debtor, no cause to complain.