

5. *Widow — Legacy — Dower — Election — Estoppel.*—A will provided for the payment of a large number of pecuniary legacies, including one to the testator's widow, and, except as to the household property, which was bequeathed to her, the residue of the estate, real and personal, after paying the debts and these legacies, was given to a charity, provision being made for the early conversion into money and distribution of the estate:—

Held, that the widow was not put to her election, but was entitled both to her legacy and to dower.

The will further provided that the widow for her legacy might have the first selection of such securities or real estate as she might think desirable. Without making any claim to dower, she joined with her co-executors in sales and conveyances of parts of the real estate, and selected the remainder of it in part satisfaction of her legacy, and, although not transferred to her, subsequently dealt with such remainder as her own. It was not until after the sales and selection referred to that her right to dower was in any way considered, when she immediately claimed it:—

Held, that, under these circumstances, the residuary legatees not having been prejudiced by her dealings with the lands selected by her, she was not estopped from claiming dower; but was entitled to treat the executors as having received for her use so much of the purchase money of the lands sold as was equal to the value of her dower in them, ascertained on the same principle as it would have been had the sale been one made by the Court of the lands free of her dower, and so much of the sum at which the lands selected by her were valued at as was equal to

the value of her dower in those lands, ascertained in the same way. *Bingham v. Bingham*, 1 Ves. Sen. 126, applied. *Elliott v. Morris*, 485.

6. *Construction — Devise — Incumbrances — Exoneration — Widow — Dower — Election — Remainder — Acceleration.*—By paragraph 3 of his will, made in 1886, the testator, who died in 1895, devised house No. 35, until 1st January, 1890, to his wife, and from and after that to his brother, "his heirs and assigns forever, free from all incumbrances." This property together with house No. 45, which, by paragraph 6, he devised, with other lands, to his wife for life, and after her decease to his brother, his heirs and assigns, subject to certain legacies, was subject at the date of the will to a mortgage for \$1,200, made by the testator, which was subsequently discharged and replaced by a mortgage for \$1,300 on the same lands, which was that subsisting at the date of the death. By paragraph 4 the testator bequeathed to his wife certain leasehold premises held by him at the date of his will. The term, however, expired in his lifetime, and nothing passed to his wife under this paragraph. By paragraph 5 the testator directed his wife to pay off the mortgage for \$1,200, and any other incumbrances upon the property devised by paragraph 3, and declared that the bequests made to the wife by paragraphs 3 and 4 were made to her for that purpose:—

Held, that the effect of the will was to exonerate house No. 35, to the extent of the interest in it devised to the brother, from the payment of the proportionate part of the mortgage, and to cast the burden of the payment of it upon

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