ceed to have damages assessed in her favour for something. The question will then arise whether the 5th section of the Dower Act of 1850 is to be applied to cases where the action is brought against the heir, and compel the demandant to serve him with a notice a month before the bringing of the action, as in cases where she would (to entitle herself to costs) do against any other person, where her husband did not die seised.

On examining the evidence given in this case, it is quite clear that the tenant, from the time of the death of the demandant's husband down to the bringing of the action, was always ready and willing to have assigned the dower to the demandant, but she always refused to take the land. She avowed that her object was to compel him to make some money compromise respecting it, and that she did not want the land. I met with a case in Viner's Abridgment "Dower" M.a, Vol. IX. p. 282, very applicable to this The tenant pleaded *tant temps prist*: the demandant replied that she had, at a particular time, demanded the dower, and that the tenant had refused; and in answer to that the tenant rejoined that he had, at the time mentioned, appointed a time, and requested the demandant to come upon the land, and that he would give her the dower, but that she refused. The court adjudged that it was a good answer of the tenant.

It appears to me the tenant is entitled to judgment upon these pleadings and the evidence, and that the verdict should be entered for him, leaving the demandant to have her judgment for seisin, without damages, or take such other course as she may be advised.

McLEAN, J., concurred.

Judgment for tenant.

COOMBS v. THE MUNICIPAL COUNCIL OF THE COUNTY OF MIDDLESEX.

Court House—Control and repair of—7 *Wm. IV, ch.* 18, 11 *Vic.. ch.* 18, *secs.* 36. 41.

The magistrates in Quarter Sessions have no power to order furniture for the court house, and the County Council are not liable for furniture so supplied.

The fact that the court house was also used as a shire hall for the sittings of the Council, and the furniture made use of by them, could make no difference.

SPECIAL CASE.

Upon the order of the magistrates of the County of Middlesex in Quarter Sessions, the sheriff of the county ordered of the plaintiff, who is a cabinet-maker and upholsterer, and the plaintiff furnished and put up, the following articles, on the 9th of February, 1857:

the Court Room.			
Five sets damask curtains	£7	1	0
Five sets blinds and rollers	5	0	0
Judge's Room.			
One carpet	5	0	0
Sheriff's Office.			
One carpet, (40s.) chair cushion, (15s.)	2	15	0
Clerk of the Peace Office.			
Three office chairs and cushions	5	5	0
Repairing chairs	*1	0	0
Two carpets	3	0	0
Refixing iron work to office chair, and listing door	*0	6	3
Total	£93	6	3

At the adjourned sessions, on the 18th of April, 1857, this account was duly audited, (first having been sworn to,) and a draft was signed by the chairman in favor of the plaintiff, upon the treasurer of the county for the amount.

The matter being brought to the attention of the defendants, and they considering that the magistrates had exceeded their authority, the treasurer was directed by them not to pay the draft—except as regards two items, amounting to one pound six shillings and three pence, marked thus,* which were for things ordered by the County Council Clerk, which the plaintiff refused to receive, unless the whole bill was paid—which direction he obeyed.

The account was audited and a draft issued under the statute 7 Wm. IV., ch. 18, in accordance with all the provisions of that statute, under the presumption that that statute gave them authority to order these things. The prices are not disputed, but the liability of the defendants or the treasurer to pay the amount, or any part of it, except as above is disputed.

The curtains and blinds in the court room still remain there, and the meetings of the defendants, as also of the different courts of justice, have been held in that room since they were put up by the plaintiff, as usual. The carpet also remains in the judges' room, and the articles furnished for the office of the sheriff and clerk of the peace are still used by those officers.

If the County Council or treasurer are liable to pay the amount, or any part of it, except as to the sum of one pound six shillings and three pence above named, in the opinion of the court, they will do so, with interest from the date of the draft. The payment of costs to be at the discretion of the court.

Becher, Q. C., for the plaintiff.

Connor, Q. C., for defendants.

Robinson, C. J., delivered the judgment of the court.

We are of opinion that the plaintiff has no claim upon the municipality to pay him for expenses incurred upon the express order of the justices of the peace.

He has obtained the order of the Court of Quarter Sessions in his favour, signed by the chairman, and professing to be made by virtue of the statute 7 Wm. IV., ch. 18, and 9 Vic., ch. 58.

The latter statute clearly has no reference to charges of this description, but only to fees for services rendered in criminal proceedings. Under the former act the order would be void, unless it quotes the act of parliament under which it was made. The question, therefore, is whether the statute does in itself authorise this order, for it is the only other act named. It is certain that that act makes no provision relating to this kind of expenditure, or to any particular kind, but only to the payment of such as are authorised by other acts.

The statute 4 & 5 Vic. ch. 10, sec. 39, makes it the duty of the municipality to keep the public buildings in repair, and to provide means, and defray such expenses connected with the administration of justice as used to be provided for by the justices of the peace, out of the district funds.

Of course when the justices of the peace lost the power of raising funds to meet these charges, the duty could no longer be incumbent upon them to attend to those objects. And the statute 11 Vic., ch. 18, secs. 36 and 41, gave to the County Council the discretion of doing what was necessary for repairing and keeping in order the court house, shire-hall, and other public buildings.

The justices cannot, since that, bring any charge upon the county by any thing which they may take upon them to do in these matters, which are thus placed especially under the care and control of the Council.

The claim indeed seems rather to be attempted to be supported on the ground, that the curtains and window-blinds, which came to more than three-fourths of the amount of the order, were put up in the court room, which is also used by the Council as the shire hall. But we do not see that that fact at all helps the plaintiff's case. The court house is not exclusively the shire hall, and there is no pretence for saying that these things or any of the other items in question, were furnished with a view to the accommodation of the County Council. If that had been the object, it would surely have been left to the Council themselves to give the order, and to direct and approve of what was done.

They could not be expected to abandon the court house because it was made more comfortable and respectable than it had been before, and therefore their continuing to use it after the change as before, raises no implied assumpsit on their part to pay for what was not ordered by them, nor by their agent, but by the justices with a view to the accommodation of the court and not from an idea on their part that it rested with them to provide furniture for the use of the Council

Besides, we could not rely upon the supposed acceptance and use of the articles by the Council as furnishing proof by implication that the things were provided at their request, for it is expressly admitted that it was the sheriff of the county who gave the order to the plaintiff, and he certainly was not the agent of the Council.