

1. Is the widow entitled to dower out of the lands of the deceased, in addition to the provision made for her in the will?
2. Is the widow entitled to a lien upon the whole estate of the testator to secure to her the annuity of \$200?
3. In the event of the income from the testator's property being insufficient to pay the widow's annuity, is she entitled to look to the corpus to make up any deficiency?
4. Can the executors apply any part of the income for the benefit or support or maintenance of the infant mentioned?

The motion was heard by BRITTON, J., at Cornwall.

R. Smith, K.C., for the executors.

D. B. MacLennan, K.C., for the widow.

A. L. Smith, for the Official Guardian, representing the infant Mildred Ouderkirk.

BRITTON, J. (after setting out the will and the facts):—As to the first question, the strongest case that I have been able to find in favour of the widow's contention is *Re Hurst*, 11 O.L.R. 6. Unless this case can be distinguished from *Re Hurst*, the widow will be entitled to dower in all the lands except the house and lot in Berwick. I think this case is distinguishable. The test seems to be: "Is there such reasonable provision made by the testator for his widow as warrants the inference that such provision was intended to be in lieu of dower?" The inference need not be beyond possible doubt, but it must be so strong as to be beyond reasonable doubt. That is to say, the inference must be so strong as fully to authorise its being acted upon in a contest between the parties claiming under the same will.

To adopt the reasoning in *Re Hurst*—"Am I able to find in this will, or gather from its provisions, that it was the intention of the testator to dispose of the lands other than" (the lot at Berwick) "in a manner inconsistent with the wife's right to dower in these lands? Do the provisions of the will shew clearly and beyond reasonable doubt that it was the positive intention of the testator, either clearly expressed or clearly to be implied, to exclude his wife from dower?"

The debts and funeral and testamentary expenses were to be paid. There was not sufficient personalty to pay these. These executors were given the power to sell both real and personal estate for the purpose of paying the bequests and to invest the funds in a chartered bank or in first class securities—interest