Aforie Term 1865.

(See original Order also on this page)

Which said copy of Order is duly attested as follows to Wit

"True copy. Test Wm H H Turner Clk"

All the Jud returns is thus Cause to Wit"

"Service of copy of the above admitted as made this 17 October 1854.
Charles F. Mayer Solr for Sophia Durham"

And afterwards to Wit on the 28 day of October in the year last aforesaid the Court passed and filed in said cause the following order to Wit

In the Circuit Court for Baltimore City to Wit

Ordered by Consent of parties this 28 October 1854 that the time for showing cause as required by the order of 14 October 1854 on part of the Petitioner Susan Durham be and is hereby enlarged to the 15 November 1854 and that meanwhile in the matter of said Susans claim and petition aforesaid the and all parties be allowed to take testimony before a Justice of the Peace of the said City on ten days Notice to be used at the hearing of said Petition and for showing cause aforesaid, and to be returned by the said 15 November 1854 into Court,

Wm Gr Krebs,

And afterwards to Wit on the fifth day of March in the year 1855 the following Certificate and agreement were filed in said cause to Wit,

$656 due 13 Nov 1839 was deposd in Merchants BK 16 Cols 39
672 " 13 " 1840 " " " " 21 " 40

The above is a memorandum of the Notes of Solomon G Albers for balance of purchase money of the Real property bought by him of me. This memorandum shows when the Notes were deposited by my direction for collection. They were afterwards paid and I presume at Maturity

Baltimore 20 Sept 1853 G Brown

Rhodes and others
vs
Brown and others

In the Circuit Court for Baltimore County

In the matter of the Petition of Susan Durham &c

It is agreed that the above certificate from Chas G. Brown be admitted in Evidence in the matter of said Petition and that the Notes in said certificate mentioned are those given for the purchase money payable to said Brown a defendant in the above cause for the Real Estate therein in this cause to be sold. It is further admitted that the said Petitioners Testator the vendor and donee of Solomon G Albers paid said Notes and that the personal Estate of said Solomon was sufficient for payment of his debts. It is also admitted that said Testator acquired that Real Estate as aforesaid devised to be sold for a considerable period after the said Solomons death.

Charles H. Pitts Sol for Respts
Charles F. Mayer Solr for Petitioner
March 5th 1855.

And afterwards to Wit on the 12th day of January in the year of our Lord 1856 the following statement of fact was filed in said cause to Wit

Rhodes and others vs Brown Albers and others. In the Circuit Court for Baltimore City.

Aforie Term 1865

In the Matter of Sophia Durhams Petition. It is agreed that the Estate of Mrs Albers Widow of Solomon G Albers has been fully administered and was in a condition for final distribution before the institution of the present suit. And it is also agreed that said Widow died by the Will of said Solomon and did not elect to take her legal interests in his Estate in lieu of the dower and bequest in her favor by said Will

Charles F. Mayer for Petitioner
Charles H. Pitts for Brown & Albers

12 Jany 1856.

Whereupon afterwards to Wit on the 22 day of June in the year last aforesaid all and singular the premises being by the Court here seen heard and fully understood and mature deliberation thereupon had the Court passed and filed in said cause the following opinion in Writing to Wit

Rhodes and others
vs
Brown and others

In the Matter of the Petition of Sophia Durham

The above Petition with the Agreements in regard to the facts submitted by the Solicitors for the respective parties and the Notes of their arguments having been submitted I find upon examining the proceedings the following questions presented.

1 Does a Widow who accepts lieu of Dower a devise to her in the Will her husband of Real and personal property take such personal property exempt from any claim on the part of the heirs at law to have it applied to pay a balance of purchase money due by the deceased for lands purchased in his lifetime and descended to the Heir.

2 Is a Widow, who accepts in lieu of dower a devise and bequest of other husbands Estate entitled to dower in Real Estate purchased by him after the date of the Will and which does not pass thereby.

Regarding the Widow simply as a general pecuniary legatee and denying her in resisting the claim of the heir from the fund that the act of 1798 ch 101 declares that a Vendor in accepting a devise shall be considered as a purchaser with a fair consideration "two questions are brought to an inquiry which has excited much discussion; Namely whether the assets of a testator will be marshalled in favor of legatees where the specific land out the Real Estate is that of a Vendor for purchase money due to him by the testator who was the purchaser or another rule whether the legatee of the purchaser has a right to come upon the Real Estate for the satisfaction of his legacy to the amount for which the personal assets may have been applied in payment of the purchase money owing by the Testator to the Vendor. I shall not cite the various decisions upon these point but simply refer to the conclusion to which the Court of appeals of this state came after a review of them, In Schnebly and Jones vs Nagan decided in 1835 and reported in 4 G & J p 126 The Court says The benefit of the Vendors lien has been extended to legatees when upon the death of the purchaser without payment of the purchase money the Vendor has resorted to the personal assets for the satisfaction of his claim, and has thereby exhausted the fund out of which the legacy was to be paid. This has been done upon the principle of substitution and is also founded upon the common and familiar doctrine of the Court that where one party has a right of resorting to two funds