and another only a right of resorting to and for the payment of his claim, the exercise of the right of election by him who has it in his power to resort to another fund shall not operate to the prejudice of the creditor who has only a right of resorting to and, The Court however says that the authorities are conflicting as to such a right of the legatee, though the weight of authority seems to be in favor of the right" The opinion in the above case was pronounced before the decision in the Court of Chancery in England in the case of Sewell vs Prior & Simms Rep 190 and which must be taken to have settled the law on the point where the plaintiff was a pecuniary legatee under the will of a testator who after making a good conveyance of an Estate and then leaving the greater part of the purchase money unpaid the Estate in his death descending to his heir at law. The Chancellor in deciding the case says the only question that I have to decide in this case is whether the lien which the Vendor has for the purchase Money subjects the assets of the purchaser to be marshalled on behalf of a legatee and he pronounces his judgment as follows. In the present case as the purchased Estate was wholly paid for by descending. The weight of authority is abundantly in favor of holding that the lien of the Vendor must be subjected to the ordinary rule of Marshalling assets, and the decree in the present case must be formed upon that principle. He further says in reference to the previous decisions that might seem to conflict with his own that they are not reconcilable with the general class of cases and besides that they have been positively overruled. The Point in the case in question that if the testators personal Estate was not sufficient to pay the balance of the purchase Money for the Estate contracted for and also the pecuniary legacy, that the deficiency should be raised by a sale of the Estate for the reason that the assets ought to be marshalled upon the principle strictly adopted in the above decision 1 Roper on Legacies 270 968 Again this Widow was unquestionably entitled to dower in this property contracted for by her husband in his life time under the provisions of the Act of 1813 ch 100 § 10 and having accepted the services and bequests to her in the will of her husband has relinquished her claim to dower in this land and is to be considered as a purchaser for a fair Consideration In Smith vs Bevans 1 McL Reports 223 The Court of Appeals of the state says. It is to be remembered also, that this legacy is paid out of the husbands property to the Wife in lieu of her dower, and that by abiding by that will she becomes a purchaser for a fair Consideration 1798 ch 101, 1, 3, 5 In Mengent Hayes case 1 Bland 204 The Chancellor says of a devise in lieu of dower "that it is of much higher merit" than other devises and legacies that it discharges a highly favored debt from the testator it relieves his Real Estate from a lien imposed by the law in favor of his Wife in preference to all others, and that a Widow electing to take such devise is to be considered a purchaser with a fair Consideration from all which he deduces the Conclusion that a devise or bequest of this character "is favorable as against Creditors only so far as it exceeds the value of the dower in lieu of and discharging of which it was given, And in Jebson vs McCormick 10 G & J 113 The Court of Appeals say, There is no intimation in the Will or in the case, that the provisions made for the Wife by the Will is from extent it being greater than the value of her Common Law rights and therefore unjust and unfair to creditors

She is therefore entitled to the benefit of all the bequests and devises made to her by the Will as a purchaser for a fair Consideration" So in this case there is no proof whatever that the devises and bequests to this Widow exceeded the value of her right of dower in the Real Estate descended to the Heir and her other rights in her husbands Estate and she is therefore entitled to the enjoyment of the fair provisions made for her in the Will of her husband And even where the provisions made for her in the Will of her husband, and accepted by her does exceed the value of her common Law rights I think it is manifest from the cases above cited that new but Creditors and object that he has given her by bequeathing for the relinquishment of these rights against a bar only and excessive provision must be unjust and improvident" Upon the principles set forth in the foregoing cases it is firmly settled by a series of decisions that a general bequest made by a testator to his Wife in lieu of dower will be entitled to a preference of payment to the other general legacies which are merely Voluntary for her election to accept the legacy placed her in the situation of a purchaser of what is given to her by the Will and will not be excluded from this preference though the amount of the devises and bequests to her happen to exceed the value of her dower, and thinks for the testator as the only and best judge of the fact which he is deemed to be, was the purchaser of them 1 Roper on Legacies Vol 1 p 299 1 Burridge vs Bradyll, 1 P Wms 127, 1 Bleiner vs Morrel 2 Ves 420, Darenhill vs Fletcher Amb 244, Hartle vs Denly Ross Chan 543. These cases appear that when the Widow's any to resort to general legacies, in case of a deficiency of the testators personal Estate to pay his debts, the legacy to Wife in lieu of dower is never required to contribute but that the other legatees must supply the deficiency In the case of Dissebent vs Brown 1 Edwards Chan R 413 The Court says where the husband gives the Wife a provision in lieu of dower, that the husband offers a fund in the Wife of legal rights of dower which he proposes to relinquish, if she agrees to the terms, she relinquishes it, and elections to the fund, This therefore a matter of contract between them, and what she thus becomes entitled to receive, is not by way of bounty like other general bequests but as from a chose money for what she relinquishes, and which is Consequently must be paid in preference to other legacies, they being merely Voluntary and the Judge further declares that it is necessary, in order to raise the amount to which the Widow is entitled under the Will to have the debts paid out of the proceeds of the Real Estate, I see no objection to such a course for in the case before this Court the Real Estate descending to the Heir and being devised in which it is found and being under our Laws applicable to the payment of debts, upon a deficiency of personal Estate, for what reasons consistently with the principles found in the foregoing decisions can it be Exempted from the payment of this debt for the unpaid purchase Money when there is other property that could be resorted to for the payment of it except that which is required and also in the satisfaction of the debt in consideration which the testator has contracted to pay for his Wife's dower and thirds, in his Estate, In regard the question, whether a Widow who accepts in lieu of dower a devise and bequest of all her husbands Estate, is entitled to dower in Real Estate, purchased by him, after the date of the Will and