

of them, and also an equivalent for her proportion of the sales of the lands sold to pay the mortgagee? It would be difficult to make out such proposition, and yet it would seem to follow from the position, that a widow, out of the proceeds of land sold to pay a debt, secured by a mortgage in which she has united, is entitled to an allowance, calculated upon the whole proceeds of sale, and not merely upon the surplus, after paying the mortgaged debt.

The law intends to give the widow one-third of the husband's real estate, by way of dower, and as a provision for her support, but she takes it subject to liens created prior to the marriage, or to such as she consents to, after the marriage, in the mode pointed out by the legislature, and she can take no more.

If the contrary doctrine prevail, it will not unfrequently happen, that the widow will not get one-third only, or its equivalent, but the whole surplus, after paying the liens, will be received by her, to the prejudice of the heirs at law, and creditors.

The widow was, therefore, allowed by the decree, one-fourteenth of the *surplus* only of the proceeds of sale after deducting the mortgage debt with interest.

[No appeal was taken from this decree.]

ROBERT SEWALL
 vs.
 SYLVESTER J. COSTIGAN ET AL. } MARCH TERM, 1848.

[POWERS AND DUTIES OF TRUSTEES.]

A TRUSTEE for the sale of lands under a decree of a court of equity, is the mere instrument or agent by whose hands the court acts, and the sales made by him are, in fact, the sales of the court.

The court has the incontestible power to pass an order, directing the trustee to bring the proceeds of sale into court, to be disposed of under its direction. The court is not disposed to look with favor upon the appropriation by its trustee of the proceeds of sales, without its previous authority; and such conduct will be viewed with especial jealousy where married women and children are concerned, and the property, or fund raised by the sale, is subject to marriage settlements, designed for the support of families.